



Local Government
and Public Service
Reform Initiative

Combating Conflict of Interest in Local Governments in the CEE Countries

Edited by

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Foreword

This book was prepared under the “Local Government Policy Partnership” Program, a joint project of two donor organizations. The British Government’s Department for International Development (DFID) and the Open Society Institute, Budapest’s Local Government and Public Service Initiative (LGI) launched this regional program in the year 2000. The “Local Government Policy Partnership” (LGPP) projects are intended to contribute to policy development and innovation within the countries of Central and Southern Europe (<http://lgi.osi.hu/lgpp/>).

The LGPP hopes to develop expertise and support professional cooperation among local government specialists throughout the region. The experiences of the countries participating in this program should be made available in other regions, such as in countries of Central Asia. The core partner countries are the Czech Republic, Hungary, Poland, and Slovakia. However, other countries have been invited to participate in the LGPP regional projects, in order to help facilitate direct information exchange and comparison of policy efforts.

LGPP publications include policy studies and proposals that have been presented to government officials and experts in the countries involved. Targeted beneficiaries of LGPP projects are national government ministries, local government associations, research and training institutions, and individual local authorities. LGPP intends to publish three studies a year.

In the first two years of the LGPP project, various policy areas were selected for analysis: education financing and management; regulation and competition of local utility services; public perception of local governments; the relationship between local government size, local democracy, and local services delivery; local government and housing; and capital investment financing. These policy studies were widely disseminated in the region. They supported policy dialogue (e.g., on education reform in Macedonia) and served as training materials (e.g., for regulatory experts).

Topics for the third and last year of LGPP in 2002–2003 were as follows:

- a) role of local governments in local economic development;
- b) local government borrowing, and;
- c) regulation on conflict of interest in local governments.

Regulations on conflict of interest are analyzed in six countries: Bulgaria, Latvia, Poland, Romania, Russia, and Slovakia. These studies provide a comprehensive overview of the legal and administrative regulatory framework developed during the past decade.

They focus on the new requirements originating from wide-ranging decentralization and rising privatization. In most of the countries studied, the European Union has provided the framework for national regulations. LGPP national teams have sought to broaden the traditional views on controlling corruption by presenting other non-legal instruments for regulating conflict of interest. Local codes of ethics, rules on declaration of private interest, and other similar techniques are yet to be developed in these countries.

Ken Davey

Gábor Péteri

November 2003

Problems and Prospects of Preventing Conflict of Interest in Local Governments in the CEE Countries

Summary Report

Barbara Kudrycka

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Problems and Prospects of Preventing Conflict of Interest in Local Governments in the CEE Countries

Barbara Kudrycka

1. INTRODUCTION

This summary report, and the six country reports that follow, were prepared as the final product of a program that was a donor cooperation initiative between the UK Department of International Development (DFID) and the Local Government and Public Service Reform Initiative under the Open Society Institute (OSI/LGI). The project was administered by the Local Government Policy Partnership Program, and it consisted of legal and economic analyses from six Central and Eastern European (CEE) countries: Bulgaria, Latvia, Poland, Romania, Russia, and the Slovak Republic.

The objective of this project was to analyze the legal framework and regulatory practices for conflict of interest situations, to assess the strengths and weaknesses of the existing legal and regulatory prevention framework, and to advise policy makers on the introduction of changes in the regulations and procedures.

The problem of legal regulation of conflict of interest in local government is very complicated, and it is regulated by many different legal institutions, as well as by different levels of legislation and areas of laws—administrative mechanisms. Our plan was to take a step forward and to highlight the importance of non-legal mechanisms of regulating the conflict of interest phenomenon at the local level. Since the “traditional” regulatory mechanisms are still very strong in our region, even for our experts the main emphasis was on the legal institutions.

Every area of conflict of interest, e.g., personal economic interest, duplication of power, nepotism, and cronyism, may be a subject of separate research. But our authors had the much more difficult and complicated task of presenting the whole system of regulation. Thus the reports contain “a mass of details.” However, some of these reports do not contain details if these countries have not yet applied any legal regulation concerning particular types of conflict of interest or particular administrative mechanisms. Due to the limited size of the reports, some administrative mechanisms—like internal

and external audit, civil service qualifications, and training—are mentioned only to emphasize the most important and specific elements.

The most important principle of the whole study was to identify recommendations for policy makers to counteract the weaknesses of the country's regulation system. Research done by the country reports' authors allow us to find answers to questions such as:

- Which countries have an incomplete regulation system?
- Which types of conflict of interest prevention have not yet been regulated?
- What are the weaknesses of already regulated types of prevention?

In the country reports, the existing legal possibilities for prevention of conflict of interest have been evaluated on the basis of a comprehensive analysis of the development of the legislation and sub-legislation in the field. As a result, recommendations to policy makers at the central and local levels for the needed changes in the main legislation have been developed, and so have recommendations for the design of procedures that cover cases of conflict of interest. The policy proposals have taken into consideration the opportunities for their application in other countries of Central and Eastern Europe, and they may be of interest for West European countries as well.

Corruption and conflict of interest prevention have become one of the European Union's major and ongoing concerns in candidate states since the establishment of the "Copenhagen criteria" in 1993 and its initial 1997 assessment in the "Agenda 2000" report on CEE accession countries.

The annual preparation of the regular reports to the European Commission follows a checklist of six criteria for monitoring corruption:¹

- the existence and implementation of anti-corruption policy;
- institutional arrangements for implementation and division of tasks among institutions;
- codes of conduct for public servants;
- training programs for public servants;
- cases of corruption in government and public administration—and how the authorities have treated these cases;
- ratification and implementation of relevant conventions (Council of Europe, OECD).²

The measurement methodology and criteria implied by the Commission's Regular Reports include criteria that are applied more or less consistently across all candidate states and criteria applied just in a few candidate countries.³ Without these criteria, it would not have been possible to describe in this volume, in a uniform structure, the system of conflict of interest prevention at local governments by means of each coun-

try's report.⁴ Only the Russian report is structured differently, since it primarily focuses on institutional conflicts associated with the provision of services by publicly owned enterprises.

This summary report will focus on systems preventing conflict of interest that the six CEE countries have developed. It is a part of a multi-country comparative study on the legislative and institutional measures. It presents the status of the matter for these countries, with regard to the legislative framework and implementation practices, by focusing on the measures directly related to local self-government.

2. CONFLICT OF INTEREST, CORRUPTION

A sustained decline of public trust in public institutions in the CEE countries has been reported by many international and domestic organizations. Public opinion surveys indicate that it is a popular belief that corruption is widespread and power resources are used for personal gain. But the public emphasizes not only corruption phenomenon but also "softer areas," such as nepotism, cronyism, favoritism, ignorance, and using government property for personal benefit. According to public opinion polls on issues of bribes, speed-money, and extortion in Eastern Europe, offering of gifts to public officials is a widespread phenomenon.⁵ The majority of people think that to receive timely administrative treatment, the giving of at least a small gift is needed.

Corruption usually means a malpractice, with heavy sanctions, and it is characterized by the acquisition of financial benefits, while conflict of interest has a wider scope of social relationships and behavior, the majority of which is not classified as a crime, and it affects the unbiased exercise of official duties. In the general sense, conflict of interest means the use of power by public officials to promote their private interests, or the private interests of their relatives or commercial enterprises in which they participate.

Conflict of interest also has an institutional meaning. Institutional conflict of interest appears between the roles of the local government official as a defender of the public interest in the quality and efficiency of municipal services and, at the same time, the owner or founder of local service providers, such as a school or heating company, or as the employer (direct or indirect) of its staff.

The legal and regulatory framework on conflict of interest might prohibit public officials, among others, from engaging in private business, require officials to disclose private interest in any issue under consideration, or require that they withdraw from participation in related decisions. In the institutional meaning, the legal framework might prohibit duplication of power of local government officials, e.g., prohibit staff of municipal companies or institutions from membership in elected councils or prohibit mayors from membership in municipal company boards.

Gerard Carney points out that:

“...as opposed to corruption, the term ‘conflict of interest’ has a wider scope and includes a wider sphere of social relationships. Corruption covers collision of personal and public interests in cases of public officials, where the acquisition of financial benefits takes place most frequently, while conflict of interest presupposes any collision of public and personal interests with respect to public officials, which may cause doubts on the biased manner of performing their official duties. In other words, corruption is the final stage of conflict of interest. It may be said that all cases of corruption include conflict of interest, whereas the opposite does not always hold good. Besides, corruption most often is a crime, conflict of interest incorporates a wide circle of various types of behaviour, the majority of which are not classified as crime...”⁶

Thus, the essence of conflict of interest is violating the socially acceptable balance between the civil servants’ personal interest and the public interest.

Most countries do not use the concept of conflict of interest literally, and the legislation usually does not provide a legal definition on conflict of interest. In general, the concept of conflict of interest as a legal term is relatively new. In most countries it has already been introduced in the legislation but mostly through the focus on the fight against corruption.

As a result, the types of conflict of interest recognized in the CEE legislation primarily include holding a public office simultaneously with other private or public jobs or positions (“incompatibilities”) or economic conflict of interest. Nevertheless, in the theory of administrative science, there is great demand for a clear legal definition of conflict of interest.

3. THE RELATIONSHIP OF CONFLICT OF INTEREST REFORMS WITH OTHER REFORMS IN CEE COUNTRIES

The conclusions of the reports show that all these countries have developed the necessary legal basis for local government. These laws proclaim local autonomy and establish local self-governance in a one-, two-, or three-level structure.

Local government structures in the CEE countries are formed by councilors, elected directly by the citizens of the local territory, or by senior local government officials; mayors/heads of local governments, elected directly by the citizens or indirectly by the council; senior local government employees, appointed by the council or by the mayors; as well as local government staff employees. All mentioned officials may be involved in potential conflict of interest situations.

Table 1.1
The Structure of Local Governments in the Six Countries⁷

Country	Municipality	County Local Governments	Regions
Bulgaria	262 municipalities	—	—
Latvia	58 towns 459 rural municipalities 16 amalgamated	—	26 districts
Poland	2,478 communities	314 districts 65 urban communities	16 regions
Romania (as of July 2001)	2,686 communities	265 towns and municipalities	42 counties
Russia	1,098 cities 1,850 towns and urban settlements	—	89
Slovak Republic	2,891 municipalities/ cities	—	8 regions

The legal position of local government employees is similar to that of civil servants since it's regulated by the civil service law (Bulgaria, Romania, Latvia: 1995–2000⁹), or it's regulated by the law especially targeted at these employees (Local Government Employees Act in Poland, Public Service Act in the Slovak Republic). However, no matter what kind of act regulates local government employees' legal position, civil service regulations have a substantial indirect or direct influence on the performance of local government employees and institutions. If we compare the national, local, and internal regulations of the legal position of civil servants and local government employees, we come to the conclusion that civil servant regulations tend to address conflict of interest prevention more than provisions on local government employees.

The civil service acts in the six analyzed countries were established earlier, and, in some cases, they are accomplished by better developed internal regulations, like civil service codes of conduct (Latvia, Poland, Bulgaria), a better procedure of withdrawing, as well as more developed rules regarding duplication of power (Latvia, Romania, Bulgaria, Russia, the Slovak Republic). As the Slovak and Latvian reports underline, self-government representatives strongly resist and protest against provisions regarding prevention of conflict of interest in local governments.¹⁰ Consequently, national efforts to regulate conflict of interest more efficiently have met the opposition of the self-governments themselves.

Table 1.2
Mode of Selection and Status of Government Officials
in the Six Countries' Local Governments⁸

Country	Councilors	Executive officials	Executive employees	Regular employees
Bulgaria	Directly elected	Municipal mayors directly elected.	With the status of civil servants.	Status under contract.
Latvia	Directly elected	Local government mayors elected by the council.	Executive directors appointed by the council.	Are not civil servants and their status is under contract.
Poland	Directly elected	Mayors of municipalities directly elected by the population. Heads of the district and regions elected by the councils.	Executive secretary and treasurer appointed by the heads of local and regional governments.	Do not have the status of civil servants.
Romania	Directly elected	Mayors of towns, municipalities and communities directly elected by the population. Presidents of the counties elected by the council.	Municipal, town and county general secretary.	Have the status of civil servants if they hold a senior or expert position.
Russia	Directly elected	In total, 68 Russian federation heads of local governments/ mayors are elected directly by the citizens in 58 units and indirectly by the council members in 10 units.		Local government employees do not have the status of civil servants.
Slovak Republic	Directly elected	Mayors of municipalities and heads of self-governments regions directly elected by the population.		Local government employees do not have the status of civil servants.

To phase out patronage in local-government appointments in a realistic and systematic way, a stable and well educated corps of local-government servants should be created. The idea of creating a corps of local-government employees will be an important

one to develop human resource management and to support strengthening ethics and professionalism independent from local-government officials. According to the Polish report:

“...the corps should be regulated similar to the corps of civil servants, with political neutrality, professionalism, impartiality and diligent operation. Local government employees should be appointed or contracted only by competition rules and their professional abilities. The introduction of a new ethical culture of public service in local governments is also needed.”

Insufficient political commitment could be another reason for weak conflict of interest legislation and poor legislative implementation in the CEE countries. Drafting any legislation is very important, as it creates the basis for future actions to be developed, but enforcement becomes crucial, too. The more extensive the reform gets, the more important political will becomes. As the Romanian report indicates, the development of successful public policies aimed at preventing conflict of interest in the Romanian public sector has proved to be a difficult task. The fundamental obstacle that has to be overcome is still the need for sufficient political will to build a fully professional public service body protected from abusive political control.

The lack of political will and the self-governments' opposition to more effective and systematic regulation on conflict of interest is very clear in Russia's case, where there are no substantial rules applied to political positions in local governments (councilors and heads of local governments/mayors).¹¹ The absence of provisions regulating local government officials' personal behavior, rights, obligations, and responsibilities, creates the ground for conflict of interest and the various forms of corruption there. As the Russian report indicates:

“...now, if the mayor of city, the head of local administration, or the deputy is engaged in enterprise activity, and this official uses the service position or property in his management not for realization of the authorized powers, it is extremely difficult to establish measures of prevention and responsibilities.”

And later:

“Probably this may be explained by the traditional Russian mentality. Nevertheless, the high dependence of municipal administrative systems on executives' personal and professional qualities makes these systems vulnerable and creates the negative tendencies of authoritarianism and criminalization of municipal structures. So, the election for mayor (the head of administration) of a city or region, of a dishonorable, incompetent, closed-minded person with a low level of administrative culture

and little sense of justice, or the election of a criminal, can discredit the idea of local self-government, and as a consequence, it leads to a strong alienation of the population from the local authorities.”

In other analyzed countries, the position and responsibilities of elected local government officials are better regulated than in Russia, where, as a rule, councilors, as well as mayors and heads of local governments, use broader legal autonomy in performing their official duties than local government employees. Moreover, elected officials’ obligations and responsibilities are not subject to detailed and substantial national, local, and internal restrictions. When local government employees’ activities are subject to these more or less detailed restrictions, politicians are concerned about their freedom to act independently, and they prefer to play the political game without restrictions. The Slovak report stresses that legislation applying to representatives of self-government councils, mayors, and heads of regional self-governments is not sufficient now. In the laws that established this position, there are provisions on the incompatibility of positions. However, the problem of conflict of interest is regulated insufficiently. The obligation to submit property declarations, as well as a ban on participating in commercial enterprises, does not exist. Although Poland and Latvia have regulations that oblige elected officials to file financial statements, effective conflict of interest provisions are more problematic. Since 2003, Poland has had new and relatively good regulations targeting elected officials in local government, but they are still far from ideal.

Conflict of interest, both in terms of legislation and implementation, cannot be separated from the rest of public administration reforms and, as is sometimes said, the rest of the CEE transformations. There are other very important areas, such as public institutions’ transparency (starting with the transparency of the decision-making process), which need to progress following a similar timing. A comprehensive law on conflict of interest should be accompanied by the revision of other sectors, such as the electoral system, in order to empower voters to sanction politicians’ misconduct more effectively. Political parties, while backing new regulations, are expected to bring more transparency to the area of party financing. The lack of existence of specific legislation is definitely an obstacle for institutional leaders in their efforts to build an ethical environment in local governments.

4. THE QUALITY OF CONFLICT OF INTEREST REGULATIONS IN LOCAL GOVERNMENTS

Before drawing any conclusions in this respect, we shall investigate how differently conflict of interest is regulated by national as well as local legislation. Potential sources of conflict of interest include duplication of power, involvement in business enterprises

Table 1.3
The Quality of Conflict of Interest Regulations
Applicable to Different Public Officials in Local Governments

	Bulgaria	Latvia	Poland	Romania	Russia	Slovakia
Duplication of power	Good for: <ul style="list-style-type: none">councilors,mayors,civil servants in local gov'ts,local gov't employees.	Strong for: <ul style="list-style-type: none">councilors,heads of local gov'ts,senior positions in local gov'ts.	Strong for: <ul style="list-style-type: none">councilors,heads of local gov'ts,senior positions in local gov'ts.	Good for: <ul style="list-style-type: none">councilors,heads of local gov'ts,senior positions in local gov'ts.	Weak for: <ul style="list-style-type: none">municipal employees. Nonexistent for: <ul style="list-style-type: none">councilors,heads of local gov'ts.	Good for: <ul style="list-style-type: none">councilors,mayors. Weak for: <ul style="list-style-type: none">local gov't employees.
Involvement in business enterprises and shareholdings	Weak for: <ul style="list-style-type: none">councilors,local gov't employees. Good for: <ul style="list-style-type: none">mayors,civil servants.	Strong for: <ul style="list-style-type: none">councilors,heads of local gov't,executive directors.	Strong for: <ul style="list-style-type: none">councilors,heads of local gov't,senior local gov't servants,their spouses.	Good for: <ul style="list-style-type: none">councilors,heads of local gov't,senior servants,their relatives.	Good for: <ul style="list-style-type: none">municipal employees. Nonexistent for: <ul style="list-style-type: none">elected officials.¹²	Weak for: <ul style="list-style-type: none">councilors,mayors,local gov't employees.
Acceptance of gifts and hospitality	Weak for: <ul style="list-style-type: none">civil servants in local gov'ts. Nonexistent besides penal code for: <ul style="list-style-type: none">councilors,mayors.	Strong for: <ul style="list-style-type: none">councilors,heads of local gov'ts,senior civil servants.¹³	Strong for: <ul style="list-style-type: none">councilors,heads of local gov'ts,senior civil servants.¹⁴	Good for: <ul style="list-style-type: none">civil servants in local gov't. No data for: <ul style="list-style-type: none">councilors,heads of local gov't.	Good for: <ul style="list-style-type: none">local gov't employees. Weak for: <ul style="list-style-type: none">councilors,heads of local gov't.	Weak for: <ul style="list-style-type: none">local gov't employees. Nonexistent for: <ul style="list-style-type: none">councilors,mayors, besides penal code.

Table 1.3 (continued)
 The Quality of Conflict of Interest Regulations
 Applicable to Different Public Officials in Local Governments

	Bulgaria	Latvia	Poland	Romania	Russia	Slovakia
Institutional conflict of interest	Weak , only in the form of the institution of incompatibility for councilors and mayors.	Good , in the form of the institution of incompatibility. ¹⁵	Good , in the form of the institution of withdrawal and incompatibility.	Good , in the form of the institution of incompatibility. ¹⁶	Good , in the form of the institution of incompatibility and conflict of competence.	Weak , in the form of the institution of incompatibility.
Use of municipal property	Weak , in the form of the code of conduct applied rather rarely to local gov'ts.	Good , only in the form of transferring l.g. properties and penal code.	Weak , in the form of transferring gov't property and penal code.	Weak , only in the form of transferring government property and penal code.	Weak , in the form of transferring gov't property and penal code.	Good on transferring properties. Weak , in an inappropriate use of official equipment.
Local public procurement process ¹⁷	Good public procurement regulation.	Good public procurement regulation.	Good public procurement regulation.	Good public procurement regulation.	Good public procurement and privatization regulation.	Weak public procurement regulation.
Favoritism, nepotism	Good for: • councilors, • civil servants in l.g. Weak for: • mayors, • contracted employees.	Good for: • local gov't employees. Weak for: • councilors, • mayors.	Good for: • local gov't employees, • heads of local gov'ts. Weak for: • councilors, • mayors.	Weak , only in the form of legal restrictions addressed against employment of relatives.	Nonexistent	Weak ; only in the form of legal restrictions addressed against employment of relatives.

Table 1.3 (continued)
 The Quality of Conflict of Interest Regulations
 Applicable to Different Public Officials in Local Governments

	Bulgaria	Latvia	Poland	Romania	Russia	Slovakia
Use of official information for personal benefits	Nonexistent for: <ul style="list-style-type: none"> councilors, mayors, contracted employees, besides penal code. Weak without sanctions for civil servants.	Weak , there is no complete, detailed legal framework and control mechanism, besides penal code.	Weak , there is no complete, detailed legal framework and control mechanism, besides penal code.	Weak ¹⁸ , there is no complete detailed legal framework and control mechanism, besides penal code.	Exists only in the procedure of public procurement and privatization. Weakly regulated, with no sanctions.	Weak , restrictions and sanctions are developed in the penal code and in the National Security Act.
Partisan involvement in political party activities	Weak for: <ul style="list-style-type: none"> civil servants in l.g., contracted employees. 	No formal restrictions for employees to act and belong to political parties.	Weak for: local gov't employees against partisan activities.	Weak for: civil servants in l.g.	Weak for: municipal servants.	Weak for: gov't employees to work politically neutrally.

and owning shares, acceptance of gifts and hospitality, use of municipal property, local public procurement process, favoritism and nepotism, use of official information for personal benefits, and partisan involvement in political party activities by local government employees. Table 1.3 gives us a basic overview on preventive regulation of potential sources of conflict of interest in the six countries.

The data collected in Table 1.3 proves that conflict of interest regulation for local governments is quite well developed in Latvia and Poland. But even in these countries, the rules are not equipped with detailed sanctions, they only have the character of provisions, and their “blank character” results in problems with enforcement of this regulation in real life and causes difficulties with punishment of local government officials who violate these rules.¹⁹ Similar to Latvia and Poland, Bulgaria and Romania developed their own conflict of interest regulations at the beginning of the 21st century. The regulations are especially well developed for local public officials who have the status of civil servant, because the regulations were adopted both for the national and local levels of public authority. It is very interesting that, in the Slovak Republic, conflict of interest regulation is comparatively weak, and better restrictions in this regard were included in the bill of a constitutional act, which was rejected by the Slovak Parliament in May 2002. However, the Slovak regulation is not as weak as the Russian regulation. Even if one quotes the results of research on the most corrupt bodies of government, with a special focus on local governments, presented in the Russian report, it seems that the problem of a lack of adequate regulation for the prevention of conflict of interest and corruption in Russia has not been solved yet. Although institutional conflict of interest as a conflict of competence is regulated quite well in Russia, it should be stressed that the greatest weakness of the Russian regulation is the lack of detailed rules, obligations, and restrictions addressed to elected local public officials and employees in local governments.

Comparing the regulations of all the countries on the different forms of conflict of interest, one should add that fairly efficient regulations have been adopted in the field of duplication of power—as well as economic conflict of interest, such as involvement in business enterprises and shareholding by public officials, regulations on transferring local government properties, and local public procurement procedures.

On the other hand, regulation on the acceptance of small gifts and hospitalities, inappropriate use of local government equipment, cars, telephones, and trips, as well as rules against favoritism and nepotism in local governments, are relatively weak. The inefficient regulation of the conflict of interest measures in these areas is attributed to the prevailing mentality of the people in the region. People are used to giving small gifts for public services in hospitals, schools, and kindergartens, and these gifts are considered an expression of gratitude for low-paid public officials. On the other hand, people in the CEE countries rely very much on strong family relations, and if a family member has the opportunity to provide another member of the family with a good job or education, he

will use his connections to favor his relatives for employment or training. That is why it is very important that administrative and political traditions in these countries should be changed, since present institutions carry a lot of weight in this respect.

An additional weak regulation of potential conflict of interest is connected with the use of official information for personal benefit, the involvement of local government employees in partisan activities, and their loyalty to political superiors without reservations. The unlimited political loyalty of public servants, coupled with the strong influence that political parties and their political interests usually have on the decision-making process in local governments, regularly undermines the overall governing process at the local level. These weaknesses may be ascribed to the weak political culture of local governments, which are comparatively new in CEE societies, as well as to the lack of a clear distinction between political party activities and local governments' actions.

The most effective tools to counteract and prevent conflicts of interest include: declarations of private property by public officials, codes of conduct, withdrawal from the decision-making process, and reports on misconduct or suspected conflict of interest.

5. INSTRUMENTS FOR CONFLICT OF INTEREST PREVENTION

5.1 Declarations of Private Interest by Local Government Officials

Declarations of private interest by local public officials may be the best means for preventing conflict of interest if they oblige a public official to declare their property and income and, according to a set procedure, control the officials. These declarations can provide a litmus test for unjustified enrichment of local government officials. The procedure of submission and control of these declarations is given in Table 1.4.

The declaration mechanism is preferred by local governments of the CEE countries over withdrawals. There are two forms that are used for declaration of private interest: a preliminary disclosure of interest and an annual disclosure. In Latvia, Poland, and Romania, declarations of private interest apply to local public officials, such as councilors, heads of local governments, and leading local government employees, while in Bulgaria and the Slovak Republic, declarations apply only to leading local government employees, and they are not mandatory for councilors and heads of local governments. In Latvia and Poland, declarations are partly open for the media and civil society, and only personal data is not available to the public. In Romania, according to the new Law on Anti-Corruption, all information is available to the public. In Bulgaria there is restricted access to the public register containing personal information.

Table 1.4
**Declarations of Private Interest of Local Government Officials
 in the Six CEE Countries**

	Target group	Access to declarations	Required information about private interests of relatives	Institution in which declaration should be submitted and frequency of submission	Sanctions for violation of declaration obligations	Control mechanisms for enforcing the declaration
Bulgaria	Only for civil servants, not for: <ul style="list-style-type: none"> councilors, mayors. 	Access restricted. Open for media and public bodies after official's permission.	None	Appointing authority. Upon entering office and annually.	None	Conducted by appointing authority.
Latvia	For: <ul style="list-style-type: none"> councilors, heads of local gov'ts, gov't employees. 	Partly open, personal data not open. Publication electronically and in the newspaper.	Joint property of spouses.	Prevention and Combating Corruption Bureau (PCCB). Annually.	Disciplinary sanctions and responsibility and penal sanctions.	Regular control mechanisms, conducted by the PCCB.
Poland	For: <ul style="list-style-type: none"> councilors, heads of local and regional gov'ts, senior officials. 	Partly open, personal data is not available.	Joint property of spouses has to be declared.	To superior agency and transferred to treasury office. When entering office and annually.	Disciplinary and financial sanctions and penal sanctions.	Regular control mechanisms, conducted by the Fiscal Inspection Office.

Table 1.4 (continued)
 Declarations of Private Interest of Local Government Officials
 in the Six CEE Countries

	Target group	Access to declarations	Required information about private interests of relatives	Institution in which declaration should be submitted and frequency of submission	Sanctions for violation of declaration obligations	Control mechanisms for enforcing the declaration
Romania	For: <ul style="list-style-type: none"> councilors, mayors, civil servants in l.g., senior officials. 	Public, published on the internet and available in the Official Gazette. ²⁰	Joint property of spouses and 1 st degree relatives.	Councilors to the prefect, employees to the manager. When a modification occurs and at the start or end of their job.	Legal disciplinary (with dismissal) and penal sanctions.	Special Control Commission formed by two judges and the prosecutor of the Territorial Court of Appeal.
Russia	For: <ul style="list-style-type: none"> local gov't employees, elected and appointed officials. 	Not publicly available.	No request for such information.	Legal tax authorities.	No sanctions. ²¹	There is no real control.
Slovakia	For senior civil servants. Not for: <ul style="list-style-type: none"> councilors, heads of l.g. 	Declarations are secret. ²²	No request for such information.	To superior office. When entering upon office and annually.	No sanctions.	Regular control mechanisms.

The problem with declarations of private interest regulations is that they do not impose detailed sanctions for inadequate fulfillment of disclosures. In recent years, only in Latvia were administrative penalties used (up to USD 400) for inadequate fulfillment of declarations. Although the new amendments in Poland (2003) have introduced administrative and financial sanctions, and the new regulations in Romania (1996, 1999) have incorporated these sanctions, for many years, the inadequate fulfillment of declarations did not entail sanctions. And in Bulgaria, no sanctions have been provided for violating the obligation to declare private interest.

The scope of private interest to be declared is different in each country. However, the current disclosure policy in the CEE countries is generally criticized as inefficient and in need of substantial improvements. As the Latvian report points out:

“The declaration did not prevent legalization of criminally obtained funds and information by the official’s relatives.”

In Poland, Romania, and Latvia, a local public official should declare information about joint property of his/her spouses. This obligation does not exist in other countries. Verification of declared interests may be provided by the Fiscal Inspection Office in Poland, by the Prevention and Combating of Corruption Bureau in Latvia, and by the Special Control Commission in Romania. Other countries do not provide for such procedures. If inadequacies in filing declarations are not subject to administrative control, they can only be the subject of public control. Such inadequacies of declaration may be subject to public pressure if the mass-media investigate and publicize them. One can say that the role of the mass-media and civil society in the CEE countries is crucial in using publicly available declarations of private interest as a tool to investigate potential and real conflicts of interest and corruption.

5.2 Codes of Ethics, Codes of Conduct

Conflict of interest guidelines in local governments in the CEE countries have not been developed in national regulations in a systematic way. The regulations are still far from helping local government officials understand problems and ensure that their private interests do not put them in a situation of conflict of interest. Some of these situations that are clearly illegal (like the use of confidential information for personal benefit) may be dealt with by penal codes, but they are still a “gray area” requiring guidance.

Codes of ethics as “soft law” adopted by local governments may play this role by providing local government officials with guidance to “see and address problems” based on the assumption that they want to do what is right. It is expected that those who must work under the code will address potential conflicts of interest before they become actual conflicts.

The information included in Table 1.5 shows that codes of ethics are not a legal form well known in the CEE countries. Although, in modern times, codes of ethics have been adopted in Bulgaria, Latvia, Poland, and Slovakia, they only apply to civil servants. Civil servants' codes of conduct or codes of ethics adopted by these countries provide ethical norms of conduct for civil servants, both in central and local administrations. However, due to their recommendatory character and the lack of sanctions, these acts have no legal force.

The Administrative Procedure Act, passed in 1979 in Bulgaria, regulates administrative procedure, similar to the Code of Administrative Procedure in Poland (passed in 1960) and The Act of Administrative Procedure in Slovakia (passed in 1967). These codes of administrative procedure are applied to public administration employees who work for either national or local governments. The limitation of these procedural acts is that they established procedural rules only for one form of administrative activities: making individual administrative decisions. Other forms of administrative actions, such as making general administrative acts with normative character, making civil contracts and institutional agreements, and all organizational and technical activities handled by government employees, remain without any procedural regulation. Nevertheless, some aspects of making administrative decisions in the CEE countries are regulated with an approach that helps protect individual legal rights and interests. In Romania, no code of administrative procedure or code of ethics²⁵ exists.

Since the idea of a code of ethics is quite different, and it helps government employees and elected officials protect public interest against their own private interest, this kind of code is hardly known in local governments of the CEE countries. It seems that elected officials in local governments are very resistant to the adaptation of any codes that may restrict their activity and provide a measure of what kind of behavior is acceptable in public life.

Isolated cases of practical implementation of codes of ethics by local government councils are rather rare, and they do not figure as an influential factor in the behavior of elected officials and local government employees. Some results in the adaptation of codes of ethics have been achieved by city councils in Russia and Poland, and they were based on different projects developed by international organizations. From this point of view, it is very important to introduce an obligation for the integration of codes of ethics into the national regulations on local government activities as part of the local "soft law" covering local government councilors and heads of local governments. This legislation should envisage minimum norms and standards that need to be incorporated within the codes, as well as sanctions on violations. If the sanctions on violations are incorporated into codes of ethics, this may convert them from "soft law" to "hard law" regulation—and could help to enforce ethical standards in public life.

Table 1.5

Codes of Conduct and Codes of Ethics Applicable to Local Government Officials in the CEE Countries

Country	Name	Institution that established code of ethics	Local gov't officials to whom code is applied	Local gov't officials to whom code is not applied	Sanctions
Bulgaria	<i>Administrative Procedure Act</i>	<i>1979, Parliament</i>	<i>Government employees</i>	<i>Councilors</i>	<i>Sanctions related to decisions</i>
	The Civil Servants Code of Conduct	2000, Minister of State Administration	Civil servants	Councilors, mayors, contracted employees	None
Latvia	<i>Administrative Procedure Law</i>	<i>2001, Parliament</i>	<i>Government employees</i>	<i>Councilors</i>	<i>Sanctions related to decisions</i>
	Codes of ethics for civil servants		civil servants	employees of local gov'ts	None
	The Codes of Ethics (as isolated action)	City Council of Jekabpils ²³	councilors	local gov't employees	None
Poland	<i>The Code of Administrative Procedure</i>	<i>1960, Parliament</i>	<i>Local employees, civil servants</i>	<i>Councilors</i>	<i>Sanctions related to decisions</i>
	Code of Ethics for Civil Servants	2002, Prime Minister	Civil Servants	Local gov't employees, councilors	In Civil Service Act
	The Code of Ethics (as isolated action)	2001, Krakow City Council	councilors, local gov't employees		None

Table 1.5 (continued)
Codes of Conduct and Codes of Ethics Applicable to Local Government Officials in the CEE Countries

Country	Name	Institution that established code of ethics	Local gov't officials to whom code is applied	Local gov't officials to whom code is not applied	Sanctions
Russia	Codes of ethics of elective representatives ²⁴ (as an isolated action)	Izhevsk, Gatchina, Kaluga, Obninsk City Councils	Councilors	Local gov'ts employees, heads of l.g.	None
Slovakia	<i>The Act of Administrative Procedure</i>	<i>1967, Parliament</i>	<i>Civil servants, local gov't employees</i>	<i>Councilors and mayors</i>	<i>Sanctions to decisions</i>
	----- The Civil Service Code of Ethics	----- Head of Civil Service Office	----- Civil servants	----- Local gov't employees	----- In Civil Service Act

5.3 Withdrawal from the Decision-making Process

The institution of withdrawing officials from the decision-making process is needed to avoid real conflict of interest when a potential conflict of interest does not necessarily and by definition create a conflict of interest situation for a given public servant. Therefore, a distinction between a potential and real conflict of interest should be drawn. Certain relationships, especially in small communities, (such as membership in non-governmental organizations, managing public community utilities like municipal kindergartens, social care homes and museums) may become a real conflict of interest when the officials acting in their own concrete economic interest take part in a decision-making process that directly affects the respective institution. For the remaining relationships (if the institution of incompatibility and duplication of power is not applied), it is required that they should be disclosed, the relevant information provided, and the institution of withdrawal from the decision-making process may be implemented in every case when it affects the respective institution. Then the institution of withdrawal helps to avoid any situation when a potential conflict of interest may be transformed into actual conflict of interest. In this case, the withdrawal from the decision-making process ensures fair and impartial actions by public officials, since they have no private or institutional economic interest in the process.

The analyzed countries use the institution of requiring withdrawal from the decision-making process to different degrees. The countries that introduced the codes of administrative procedure (Bulgaria, Poland, Slovak Republic) have incorporated the rules of withdrawal into these acts. In Latvia the institution of withdrawal is regulated by the law “On Prevention of Conflict of Interest in Activities of Public Officials,” and other countries have partly introduced these rules in different legislation acts. Although the institution of withdrawal is well developed in these countries, “there is still a lack of mechanisms to exercise and control the effectiveness and efficiency of these provisions”—as the Polish report points out.

That is why the institution of withdrawal is almost unused in Polish local governments’ actions.

In countries like Romania and Russia, the withdrawal institutions lack a thorough legal foundation and rules of supervision for their effective implementation. Not only codes of administrative procedure, but also codes of ethics and local acts are seen as appropriate extralegal instruments for ensuring withdrawal of officials with potential conflict of interest.

In Polish administrative procedure there are two models of withdrawal:

- withdrawal of a government employee because of his/her personal interest in the case;
- withdrawal of a government office because of its executive’s interest in the particular case.

Table 1.6
Withdrawal from the Decision-making Process

	Name of the Acts that Regulate the Withdrawal Institution	Local Government Officials to Whom the Institution is Applicable	Local governmentt Officials to Whom the Institution is Not Applicable	Character of Regulation
Bulgaria	Local Self-Governance and Local Adm. Act, Administrative Procedure Act	Councilors, mayors, senior civil servants	Local employees under contract	Lack of concrete procedure for removal
Latvia	Law of Prevention on Conflict of Interest in Activities of Public Officials, Administrative Procedure Law	All state and local government officials		Lack of concrete sanctions
Poland	Code of Administrative Procedure	All state and local government officials	Councilors	The institution is almost unused ²⁶
Romania	Law on Local Public Administration	Local elected officials	Local government employees	
Slovakia	Act of Administrative Procedure, Code of Civil Procedure	All employees of administrative body	Councilors	

However, the necessity of requiring councilors and heads of government to withdraw from decision-making when they have personal interest in a specific case is as important as developing different models of withdrawal. The withdrawal institution obliges them to withdraw from such a procedure. Applying sanctions for non-withdrawal in such cases may help to enforce such a regulation in real public life in local governments. This institution may be very useful to avoid conflict of interest by councilors and heads of local governments if they withdraw from the decision-making process voluntarily, should the public suspect them or their relatives of promoting a personal interest, or the interest of a political party or local institution which they represent. Nevertheless, the general conclusion is that, currently, the institution of withdrawal has not been regarded as a useful and practical tool that efficiently helps to avoid conflict of interest in the CEE countries, and it has not yet been applied effectively in the activities of government officials at the local government level.

5.4 Reporting Misconduct or Suspected Conflict of Interest

The CEE countries appear to have procedures to expose wrongdoing by public servants in state and local governments. Similar regulations are available in each country, such as complaint procedures, telephone hotlines, and the institution of the ombudsman. However, these avenues are used mostly by the public and not by government employees. It should be mentioned, nevertheless, that, in the CEE countries, a solid tradition of reporting conflict of interest by the public does not exist, since reporting by citizens was used to gather intelligence in the communist era. That is why current compliance mechanisms are not considered as useful tools for honest and socially oriented people today. In such a situation, the problem of reporting conflict of interest should be solved by completely new legislation that will regulate this phenomenon effectively, since it is a powerful tool for the public's control (including mass media) over decision-making and helps ensure transparent, impartial and ethical local activities.

In the six analyzed countries, there are no obligations adopted for local government officials to report any misconduct by other local government officials. Detailed obligations for local government officials to report about potential or actual conflict of interest situations are regulated only in one analyzed country, in Latvia, by the law "On Prevention of Conflict of Interest in Activities of Public Officials." There is no such regulation in other countries, besides the institution of withdrawal, when the public official is obliged to declare voluntarily that he or she has a private interest in a particular case. But this institution does not apply to reporting on potential conflicts of interest by fellow officials. Of course, the institution of citizens' complaints on unethical conduct by public officials could be used for this purpose. However, citizens receive information on the misconduct or conflict of interest of public officials only from publicly available

declarations of private interest, and they are not active in this respect, since their private interest is not recognized in administrative decisions when such a conflict appears. In this regard, the role of mass-media should be crucial for publicly reported potential conflict of interest, and journalists could play an important role in investigating such conflicts.

Table 1.7
Reporting Misconduct or Suspected Conflict of Interest

	Special Institutions Where a Public Servant or Citizen May Report Conflict of Interest Problems	Legal Protection of a Government Employee Who Reports on Misconduct
Bulgaria	Four pilot institutions of municipal ombudsman, Public Administration Commission at the Council of Ministers	None
Latvia	Bureau of Preventing and Combating Corruption ²⁷	None
Poland	National Ombudsman and isolated initiative of telephone hotlines	Weak protection under the institution of hierarchical recourse ²⁸
Romania	Prime Minister's Control Department, National Ombudsman, isolated initiative of telephone hotlines	General protection against abusive dismissal
Russia	None	None
Slovakia	National Ombudsman	None

Latvian regulation obliges public officials to report on possible duplication of power, as well as on their own financial interests. This regulation is an important step towards motivating public officials to report on potential conflicts of interest in the form of special internal procedures. Beside the fact that this procedure was introduced recently for the first time in the CEE countries, one can observe some weaknesses in this regulation. Two of the most important shortcomings include:

- Latvian public officials who report on potential conflicts of interest cannot report to an independent administrative body separated from the institutional hierarchy. Instead they have to file the report with an agency that supervises their office at the next higher level.
- The Latvian act does not regulate the legal protection of public officials who decide to report misconduct or potential conflict of interest of fellow public officials.

Analyzing this regulation, it seems quite clear that, in the CEE countries, there is an evident absence of legislation to protect officials who report cases of corruption,

misconduct, and conflict of interest. Since people of this region feel unprotected in this arena, they often refuse to report on conflict of interest situations, or they do not believe that reporting will have any effect. It is necessary that reports be submitted to an independent body. If the body is within the structure of the local administration, it is possible that internal conflicts among officials may arise. Anonymous reporting is not a good idea, because it may result in abuses. A personal report with name and address attached can help promote detailed investigation in the case, but solid legal protection of the person who makes the report is necessary.

The Bulgarian report includes a recommendation on establishing a specialized body on ethics issues in local governments, like Commission on Ethics. Such a commission should be equipped with the necessary authority, duties, and responsibilities for investigation and guidance of conflict situations, and it should be able to make proposals for sanctions to be applied by relevant agencies. One can recommend the adoption of these commissions at the national, regional, and local levels in other countries as well.

6. CONCLUSIONS ON REGULATIONS TO PREVENT CONFLICTS OF INTEREST IN LOCAL GOVERNMENTS

In the last 10 years, the CEE countries have made significant efforts to regulate problems like fighting against corruption and preventing conflict of interest. The identified problems pose the necessity to improve the regulatory framework on conflict of interest at all levels of government, which will contribute to:

- creating the basis for strengthening the stability of institutions and earning the trust of civil society;
- accelerating the accession process to the European Union;
- supporting the accomplishment of governments' missions in the fight against corruption at all levels;
- building functioning local governments effectively.

However, taking into consideration the analyzed legal regulations for preventing conflict of interest, the CEE countries are still in their formative period. Since special legislation on conflict of interest is comparatively new, there is no wide experience in its application.

As the Latvian report underlines:

“Major pieces of legislation ensure a detailed set of restrictions for public officials. The institutional system is very fragmented; the application of anti-corruption legislation is weak.”

Although the comprehensive proposal of constitutional law on conflict of interest submitted to the Parliament of the Slovak Republic in May 2002 has covered many different areas of conflict of interest, it was later rejected.

As for the Bulgarian report:

“...due to the horizontal approach to the organization of the Bulgarian legislation, conflict of interest provisions may be found in different legislative acts, depending on the sphere of regulated public relationship. The separate acts stipulate different bans and restrictions aiming to prevent the use of official position for personal gain, or to prevent the creation of conditions for bias in the activities of public officers.”

The situation is similar in Poland, Romania, Russia, and the Slovak Republic. In these countries, most issues concerning the regulation of potential conflict of interest situations are covered in various legislative acts, and there are almost no special laws particularly devoted to the resolution of conflict of interest in public policy institutions. In Russia:

“Various federal and regional legislative acts may contain bans and restrictions dealing with prevention of conflict of interest situations, especially in local governments.”

Nevertheless, legislators in the CEE countries have not defined all the potential areas of conflict. Unlike in Western European countries, some problems are either not covered by legislation, or the laws are not exhaustive enough.

In each analyzed country, a more detailed regulation on conflict of interest applies mainly to civil servants. As far as mayors, municipal councilors, and even employees under labor contract in municipalities are concerned, the regulation is incomplete. The legal position and ethical obligations of elected officials in local governments in Russia and Slovakia have not been regulated yet. Furthermore, the norms on conflict of interest prevention are not systematically grouped into divisions or separate sections of the acts but rather dispersed throughout the text. Legal shortfalls concerning some procedural regulations of more significant public interest also appear, such as granting concessions or licences, awarding municipal property, submitting financial declarations, etc.

It is hard to say which factor has contributed to the current situation the most. The absence of a unique, comprehensive law on conflict of interest and the resulting perpetuation of the current sequential regulations is one factor generating confusion, misinterpretation and, ultimately, superficial application of the law. Because of the insufficient understanding of the terminology and the implications, regulations run the risk of remaining superficial. Today, we can say that, with the possible exception of Latvia, there is no general law regarding conflict of interest, and it remains an issue that is disparately and incompletely regulated by several acts of legislation.

The authors of the Romanian report underline that:

“... only after incorporating all principles in one unique law should sectoral regulations be drafted in order to address particularities and expectations to all sectors. Stating the rules and obligations clearly should be the top priority for the public institutions’ leaders at all levels.”

In general, in the CEE countries the content of procedures and internal rules are highly dependent on the provisions of the specific laws.

As a general rule, there is a reluctance of high public officials and managers to impose internal regulations that exceed legally binding provisions. This is what makes the general legal framework for conflict of interest extremely important, but it also leaves little room for expectations that local institutional initiatives would make up for the failures of the legal framework. Following the legislation’s spirit and principles, institutions in local governments need to have internal regulations, applicable to their members’ specific activity.

However, the most significant weakness of the CEE laws on preventing and detecting conflict of interest is the fact that the provisions are not supported by sanctions. This means there is insufficient authority to execute the sanctions, resulting in a rule of “blank concept”—a rule that does not work in real life. That is why cases of violation of conflict of interest restrictions are quite frequent in the CEE local governments. Since January 1, 2003, Poland is the only one of the six countries that has new regulations providing categorical restrictions on senior local government officials. The violation of these new Polish rules may entail the sanction of loss of a managerial, supervisory, or auditing position. However, there is no evidence of its effectiveness yet.

Another problematic area the CEE countries have to deal with today is the absence of real implementation of existing regulations. This problem was underlined by the Romanian, Bulgarian, and Polish reports. The provisions are often vague enough to leave space for different interpretations, a situation that ultimately leads to the non-implementation of the law. With respect to the growing number of legislative abuses, many citizens have complained about legislative incoherence and insufficient law enforcement.

7. THE IDENTIFIED PROBLEMS OF ENFORCEMENT TO PREVENT CONFLICTS OF INTEREST IN LOCAL GOVERNMENT REGULATIONS

Massive decentralization of public administration in the CEE countries, privatization, and intensified contacts of local governments with private firms have changed the traditional relationship between the public and private sectors, which has blurred the line between what is acceptable or permitted and what is not. Consequently, conflict

situations in local governments appear when the objectivity and impartiality of public officials are endangered. Public procurement, privatization, membership and founding of political parties, and the use of public property for private interests were determined in country reports as very sensitive conflict of interest issues. Furthermore, personal interest and involvement in local government decisions, like zoning, land management, tax relief, economic subsidies, granting licences and concessions, and any misuse of confidential information are critical areas for conflict of interest.

Special attention should be paid to provide redress against administrative decisions effectively and efficiently, according to the provisions regulated in the code of administrative procedure or code of conducting businesses. In two of the six analyzed countries, Romania and Russia, public bodies do not conduct administrative businesses according to general procedural regulation. Therefore, it is very important to introduce general principles of administrative procedure in these countries to develop legal control of administrative decisions (especially in granting local concessions and licences, or awarding economic subsidies or municipal property). Regulations are also necessary to sanction conflict of interest cases. The Romanian report points out that:

“Only after integrating all guidelines in one unique law, sectoral regulations should be drafted in order to address all sectors’ specifics and expectations. Clearly stating the rules and obligations should be top priority for the public institutions’ leaders at all levels. In Romania, the content of procedures and internal rules are highly dependent on the provisions of specific laws. As a general rule, there is a reluctance of high public officials and managers to impose internal regulations that exceed the legally binding provisions. This is what makes the general legal framework regarding conflict of interest extremely important, but also leaves little room for expectations that local institutional initiatives could make up for the failures of the legal framework.”

The indirect impact of private interests on the decision-making process is not easy to identify on all levels of public domain. Nepotism and cronyism, strong family ties, and kinship or informal relations play a significant role in making decisions. As a rule, people with a strong consumer attitude and personal economic interests are most likely to try to influence these processes. That is why the legally regulated and efficiently enforced control of these processes is so important, to provide the tools to protect the public interest from private influences. For the implementation of an effective control mechanism, the permanent evaluation of enforcement of legal provisions, as well as risk assessment of the areas susceptible to misconduct and conflict of interest, are very helpful.

Besides the general problems discussed above, the following issues concerning the enforcement of conflict of interest regulation are important:

- 1) systematic violation of public procurement procedure;
- 2) weak and fragmented audit mechanisms;
- 3) inadequate transparency and openness of local government activities;
- 4) violation of mass-media independence;
- 5) lack of human resource management instruments;
- 6) poor education and training of local government officials;
- 7) problems of small communities.

7.1 Systematic Violation of Public Procurement Procedures

Local government contracts for the procurement of goods and services have been legally regulated by public procurement acts in all analyzed CEE countries. These acts regulate specific conduct and controls of public procurement procedures, and they are meant to create conditions for competition, transparency, and guarantees for the unbiased selection of private companies. They also provide procedural rules for the prevention of conflict of interest in awarding procurement contracts. Nevertheless, enforcement of public procurement regulation has been under criticism by the media in these countries. As the report on Bulgaria points out, the problems of enforcement are:

“...due to the lack of established necessary organizational prerequisites for applying the principles of transparency in the procedures, on the one hand, and the incompetent implementation of the law by the procurers, on the other.”

The Latvian report states:

“...complicated procurement procedures were prevalent in granting very small contracts. As a result, there was a substantial decrease in the efficiency of public institutions that spent a lot of time and money for expensive bureaucratic procedures. The motivation behind such legislation was the mistrust of public officials and a priority on legality over efficiency.

At the same time, procurement procedures are strongly criticized in many studies for inefficiency to achieve anti-corruption goals.²⁹ The criticism mainly concerns insufficient transparency and procedures that allow bidding where the requirements apply only to one pre-selected petitioner.”

The author of the Polish report additionally stressed that:

“Significant abuses occur before the tender is announced, such as bribes to ensure early access to information on technical requirements,

specifications, and other criteria crucial to the point system used in the decisions. Conditions for winning a bid can be set in such a way as to favor one particular bidder, and are sometimes subject to change after bidding has started. Procurement abuses are also made possible by weak bidding documents and poor evaluation practices... Access to confidential information in advance appears to be the key feature of these abuses. Collusion among bidders (for example non-competition deals between firms that monopolize the local market) also serves to raise prices and subvert the procurement process.”

Substantial violations of the procedures in public procurement are mentioned in each country's report, and there is no doubt that, in small communities, such violation occurs very often. In our opinion, it would be preferable for local communities to ensure elimination or limitation of such practices by adopting detailed and consistent guidelines for the implementation of public procurement provisions. These guidelines could help contractors and bidders to understand the process and the concepts of competition, transparency, and objectivity and ensure a better control for contracting procedures. Provisions for bidding for public contracts should be implemented and clearly explained to the parties interested (e.g., the companies found guilty of corruption should be disqualified or suspended from future tenders/bids).

It is self-evident that because the procedures for contracting for public procurement carry the highest risk of corruption, the effectiveness of these guidelines need continuous evaluation, and enforcement should be under intense administrative supervision and legal control. It is of fundamental importance to implement an effective system, since only consistently applied sanctions can demonstrate that the law on public procurement is properly enforced.

7.2 Weak and Fragmented Audit Mechanism

It should be noted that, in areas requiring special attention to maintain the integrity of local governments (such as contract awarding, privatization, tax collection, land management, and giving licences), a system of effective external and internal audit and inspection is necessary. If the public administration system is not equipped efficiently to control the risk resulting from the new public-private relationship, the danger of misconduct and potential conflict of interest in local governments is also increased.

In the analyzed six countries, there are no special institutions performing the auditing of local governments in cases of conflict of interest. Nor are there specialized agencies where citizens or local government officials can report cases of conflict of interest. Of course there are many institutions that exercise audit power over public administration,

like the prosecutor's office, state financial control bodies, national audit offices (in Slovakia, the chief auditor in municipalities' regional self-governments; in Poland, the Regional Accounting Chambers), ombudsman (in Latvia and in Bulgaria the introduction of self-governments' ombudsman is under discussion), as well as organizations to combat corruption (the Bureau of Preventing and Combating Corruption in Latvia). Currently, the control of conflict of interest in local governments is done by various external and internal public bodies and institutions that audit the authorities' work one way or another. These auditing institutions are supposed to ensure legality and objectivity in the governance of local issues and financial matters. They control administrative decisions and contracts of local authorities. Some of these control institutions, like audit offices or financial control inspections, may prevent illegal profiteering by local officials.

In order to reduce conflict of interest situations in a systematic way, we recommend that the external and internal audit institutions be vested with significant authority to be able to investigate and sanction misconduct effectively. However, at present this is not the case in the CEE countries, where audit mechanisms are very fragmented, and they perform their tasks without horizontal coordination of their activities. The Romanian report recommends:

“...fostering institutional reform in the area of conflict of interest control by unifying the competences of all bodies in charge...”

The Latvian report underlines:

“The weakest point in this system of monitoring is the inadequacy of performance audits, because such management culture in Latvia has not been developed.”

There are many forms of auditing that can help to evaluate the reform process undertaken by public organizations in each country and in each local government. Government agencies that are interested in identifying the consequences of anti-corruption and conflict of interest reforms may use:

- structural assessments (internal and external);
- perceptual assessments
 - customer and citizen assessments
 - employee assessments;
- performance assessments;
- benchmarking;
- quality assessments;
- risk assessments.

The more audit assessments are performed, the better results will be achieved.

These types of assessment help us understand the current system and its performance. A thorough understanding of the current system and performance practices does not fully articulate which values should be embraced in the future, but the sound adaptation of new regulations and practices must be based on such an understanding.

Inevitably, strong assessment strategies are the primary drivers behind fundamental changes. Rigorous investigation of regulations and practices leads to a genuine understanding of the need for new strategies. Conflict of interest assessments, sometimes called ethics assessments or ethics audits,³⁰ may either determine what the stated legal norms are or probe the discrepancy between the stated legal standards and actual practice. The former is best done by a structural assessment of conflict of interest audit and the latter by a perceptual assessment of conflicts of interest.³¹

A structural assessment conflict of interest audit is either conducted externally or internally, by one or a few people. The researchers determine, through documents, review, interviews, and expert analysis, the status of control of general conflict of interest, and how operational areas that commonly lead to conflicts of interest (business trips, nepotism etc.) are supervised, and what types of support for conflict of interest avoidance exist.

The perceptual assessment of conflict of interest focuses more on employees perception rather than on the controls and stated policies themselves. This is important because some organizations have few conflict of interest regulations and are nonetheless perceived to be highly ethical environments, while other organizations may have many rules but are considered to have many conflicts of interest in practice. Perceptual assessments may survey overall conflict of interest issues and focus on operational issues, types of support, and proposals adequate to local governments and public organizations.

The mission of such auditing institutions is very delicate, as it directly touches on the issue of autonomy. Political interference in the administrative decision-making process in local governments was strongly criticized in the CEE countries. Therefore, especially because of such suspicions, audit mechanisms need to be transparent, well coordinated, coherent, and well intentioned in order to prevent any potential conflicts of interest and to sanction already existing ones.

7.3 Inadequate Transparency and Openness of Local Government Activities

Public scrutiny of local government affairs and access to information are key tools in the development of conflict of interest prevention. It is not possible to fight corruption and conflict of interest in the absence of a culture of transparency. Building such a culture should begin through a legislative commitment to the public that breaks with many years of secretiveness, and through informing those who take an interest in public affairs. In a culture of transparency, the two concepts are interdependent: There cannot be public scrutiny without access to information.

The reported countries have few constitutional provisions that guarantee the citizens access to government offices to receive information and obtain certain services. Recently, these countries have adopted special legislation ensuring access to information (Latvia in 1998, Bulgaria, Poland, and Slovakia in 2000, Romania in 2001). These relatively new freedom of information laws offer the right to obtain information and provide access to documents and admission to meetings of collective bodies, with the opportunity to make audio and video recordings. Access to information may only be limited as much as is necessary in a democratic society to protect the privacy of citizens, public order, and security, or important interests of the state.

“Clearly, the freedom of information legislation seeks to do more than merely provide access to information or limit the data processing that local government employees must carry out in order to perform their duties and tasks. Most importantly, it seeks to strike a balance between the objectives of local governments and private interests in a spirit of pragmatic consent that widens the extent of citizen participation, both in monitoring the actions of the authorities and in making decisions on issues of local importance.”³²

Nevertheless, there are evolving traditions of civil society in CEE countries to utilize opportunities provided by law to get access to information. On the other hand, it should be noted that, due to institutional culture, mechanisms to keep the public informed at all times are being established very slowly by local authorities. As the Russian report underlines:

“Nowadays the employees of municipal structures do not place great value on citizens’ initiatives, determining this factor as the least important. An awareness of these issues of most municipal officials, as well as that of the general public, is very low. Although the right of each person to access information on the affairs of the municipality is theoretically supported, and there is a demand to base decisions at the municipal level on public consent, in practice, employees of municipal administrations demonstrate little willingness for cooperation, and they take very few initiatives to adopt a system of inclusion of citizens in local community affairs. Thus the municipal authority loses basic social respect. Besides the situation when citizens are not involved in the process of local self-government and are not its main subjects, it is fraught with another negative tendency. It has been expressed that local governments themselves, and specifically mayors who assert their own and corporate interests, as well as certain social groups of the local community functioning in ‘the shadow,’ are considered the real beneficiaries of local self-government.”

7.4 Violation of Media Independence

Ensuring civil society partnership in mutual efforts to prevent conflict of interest is another important aspect of the proper functioning of local society. In our opinion, it would be preferable for local society to create a favorable social atmosphere in support of prevention measures, because the existence of widespread public intolerance toward these phenomena would be crucial for the efficiency of the measures. In creating such a social atmosphere, the main role should be played by the independent mass-media. Unfortunately, the authors from Russia, Romania, and the Slovak Republic reported examples of the violation of the independence of local media by local public officials. The risk of violation exists when senior officials of local governments, mayors or executives take senior editorial positions at regional or local newspapers, television or radio stations, or when they subsidize local media. In such a situation, when the media are not really independent from local public authorities, they do not have a vested interest in informing the public and the auditing bodies about cases of conflict of interest, corruption or abuse of authority. And the media can lose the status of public advocates, since they become the mouthpiece of local officials, blurring the distinction between the interests of the community and the local governments. The abdication of the local media's monitoring role may lead to a higher incidence of corruption and conflict of interest. As the Bulgarian report recommends:

“...Along with citizens and non-governmental organizations, the media are the third important corrective of the local authorities, promoting better accountability, transparency, and legality of the work of the municipal bodies. Through the participation of the media in the local democratic process, the public control of the performance of the local authorities is executed in practice.”

However, in the context of the Bulgarian, Polish, and Latvian reports, one should mention that, in recent years, we can observe a positive tendency of increased activity of local media and non-government organizations dealing with problems of availability of information and transparency in public affairs. Therefore, we'd like to stress the importance of the mass-media in mobilizing public opinion, by monitoring the daily functioning of local government, its expenditures and property management, and by requesting the timely and consistent disclosure of all relevant fiscal and other kinds of information. Additionally, the newly undertaken efforts to implement the E-governance method of management by local governments in the CEE countries may help to achieve greater openness and transparency of such activities as local budget allocation, taxes, use of municipal property, public procurement, and land management.

7.5 Lack of Developed Human Resources Management Instruments

Proper human resource management for local government employees plays a key role in promoting an impartial and ethical environment. If we want to enforce legislative rules and institutions in the daily activities of local governments, we need competent and well-trained professionals to implement these changes in everyday practice. People with strong ethical values and an altruistic approach to life, as well as efficient managers, are needed to provide an insight into the activities of local governments, in order to build public trust in local democracy. To employ and retain such people in local governments, the recruitment, selection, and promotion processes should comply with the principles of open competition, merit-based selection, transparency, and equal opportunities for everybody.

In the CEE countries, such procedures are provided by the civil service law, and they are adopted only for local government employees who have the status of civil servants, as in Bulgaria and Romania. In other countries, in Poland, for example, competition and selection procedures are provided only for top management positions, like directors and managers of local hospitals, schools, museums, and theaters. It should be noted that in local governments in Russia, the Slovak Republic, and Poland, the “spoil system” still exists, and the recruitment process is not generally based on the merits and capabilities of the candidates, i.e., not on the rules of competition. Instead, it often relies on family or friendship relations. We wish to stress that in such an environment, permeated by favoritism, local government employees do not feel safe in their labor relations, which is why they do not engage in long-term strategies and actions, and they often use their term in office for maximizing their personal and financial interests. Such a working environment, without clear rules of human resource management and development, creates undesirable conditions for the deprivation of the whole organizational system and has a strong impact on potential conflict of interest and corruption.

Low salaries of municipal employees are also an apparent precondition for conflict of interest and corruption. The statistical analysis carried out in Russia concludes that:

- “The fixed level of interrelation between wages and corruption do not guarantee reduction in corruption and increase of wages.
- Wages affect corruption only in a combination with other measures; however, low salary promotes corruption.”

Besides “fairly” decent salaries and long-term contracts that motivate employees to work in the government sector as opposed to the private sector, regular and timely payment of wages should also be stipulated.

A bonus system and rewards for good work performance are used as separate instruments by CEE local governments. In our opinion, it would be preferable for local

government leaders to use moral incentives for their staff in the form of various encouragements for good quality work and more frequent recognition of the efforts employed. Unfortunately, a clear procedure of human resource management as the main instrument in the fight against conflicts of interest is not widely applied by public officials in CEE countries, or they do not have the political will to strengthen this internal sector of local governance yet.

7.6 Weak Education and Training Delivered to Local Government Officials

Although training and education of civil servants are more and more in the focus of national governments in the CEE, and national institutions were established in the nineties (in Bulgaria: the National Institute for Public Administration and European Integration, in Latvia: the State Administration School, in Poland: the National School of Public Administration, in Romania: the National Institute of Public Administration), they deliver education and training only for those local government employees who have the status of civil servants (like in Bulgaria and Romania). In other countries, education and training of self-government employees are available, but their range and consistency fall behind those for civil servants. Because there are no specialized institutions delivering education to local government employees, these tasks are fulfilled mostly by different non-profit organizations, as well as by associations of different local governments (e.g., the Foundation in Support of Local Democracy in Poland, the Foundation for Reform in Local Government or the Federation of the Local Authorities in Romania).

Apart from the problem of specialized institutions, which are well prepared and qualified to deliver good quality training services, there is another important problem of delivering training to councilors and heads of local governments. It is hard to say how many councilors and mayors take part in training programs, but there is no doubt that local government employees are more attracted to, and active in, training that improves their competency and professionalism. On the other hand, councilors and heads of local governments often do not have enough time for such activities. This problem, connected with in-service training, is crucial for small communities that lack in professionalism and competence.

Another problem is that there are no well developed modules and separate curricula focused on conflict of interest problems in local governments. Although such separate training curricula are provided for civil servants (the course on Ethics in Public Service developed by the Civil Service Office in Poland, the course on Anticorruption Strategies developed by the National Institute in Latvia) there is no evidence that such separate training services are developed and performed for local government officials in a systematic way.

We emphasize that good professional education and socialization should enable local government officials to apply the core values under actual circumstances, and keep officials well informed of the expected standards of behavior. Additionally, they can develop the skills that would help them solve conflict of interest dilemmas. Some compulsory courses delivered to local government officials in the CEE countries by different non-profit organizations could perform these tasks. Consequently, we recommend that the CEE countries undertake a systematic training initiative for local officials on issues related to conflict of interest, based on the currently existing normative regulation, and on official's interpretation of developing professional and organizational ethics. To enforce conflict of interest regulation in everyday practice, such courses are also needed for journalists, businessmen, lobbyists—and every member of the local community. Society and mass-media socialization and monitoring of these issues by means of good communication and training may help to mobilize public opinion to scrutinize local governments' daily practice and ensure an ethical environment.

7.7 Problems with Small Communities

Conflict of interest and cronyism are much harder to avoid in small communities. In such communities in the CEE countries, this is due to a generalized lack of administrative and professional capacity. If, in small communities, only a few people are adequately qualified to be teachers, physicians or directors of kindergartens, they have enough prestige to be simultaneously elected as councilors or heads of local governments. In the context of such professional networks, institutional and personal conflicts of interest are very difficult to avoid.

In addition, there are special social relationships in small communities where “everybody knows everybody else.” In such a familiar environment, informal family and friendship relations are very strong, and they have an impact or an informal influence on local governments' activities, such as awarding contracts and licences, land management, and recruitment. Such strong informal family and friendship relations increase the potential for conflict of interest and nepotism and make prevention more difficult. Even the mass-media's role to monitor and investigate corruption or conflicts of interest in such cases is relatively smaller.

People in small communities in the CEE countries, especially in poor regions with relatively high unemployment, want to improve their material circumstances using different means, for example through involvement in local politics and governance, or even through illegal activities. This creates a fertile ground for illegal, even criminal activities.

The Russian report stresses that:

“...the most corrupt bodies of the government are those that are:

- constantly involved in direct contact with the population;
- vested with the greatest discretionary powers;
- the least responsible to citizens (through the institution of electivity);
- in a position of monopoly in certain sectors of public affairs...”

In turn, the Latvian report underlines additionally that:

“...the main obstacles in small communities’ governance are beyond the reach of regulation. Too much legislation reduces flexibility, which is important for good local governance, and too many restrictions and permits increase potential conflict of interest situations. Therefore a decrease in regulation is needed in small communities, and this should be complemented by adopting stronger rules ensuring openness of public institutions activities...”

Some of these factors are typical for small community governments. In conclusion, one can say that, as far as conflict of interest regulation and its enforcement are concerned, it seems very important to rethink and adopt special provisions that could be applied for small communities specifically, if not in substantial material legislation then in procedural regulation. Due to poor enforcement of legal regulations and provisions in small communities, there is a real risk of degradation of the whole system of the rules of law, and the situation could cause difficulties of enforcement for the whole society. As the Bulgarian report recommends:

“... there is great demand to undertake a survey of the state’s constraints and difficulties in the implementation of conflict of interest provisions in small communities, keeping in mind the possibilities for a more frequent conflict appearance in small communities due to their population’s limited number. Such a study could provide systematic knowledge about the opportunities and needed legislative changes regarding small municipalities, to help create more efficient implementation of conflict of interest rules in their area...”

8. GENERAL CONCLUSIONS

There is no doubt that conflict of interest regulations addressed to local governments are comparatively weak, since they are quite new in the CEE countries. But some important measures have been undertaken in the last 10 years in this regard. These measures were mostly incorporated in state-level regulations and only initially by the local governments themselves.

In order to build a public integrity system at the local level and to ensure the enforcement of these regulations in real life, systematic public policy should be developed. It is essential that this public policy complement and support existing regulations to build an integrated system. While developing such a system, four important and interrelated factors should be taken into consideration: prevention, investigation, prosecution, and protection.³³

The reports clearly demonstrate that such a coherent system has not been developed in any of the six countries discussed here. Therefore, we can conclude that conflict of interest prevention is still weak in the CEE local governments. Of course, one can say that Latvia and Poland have better regulation than Bulgaria, Romania, and the Slovak Republic, and these five countries have better regulation than that of Russia. However, in our opinion, it would be preferable for all analyzed countries to develop a systematic approach in their public policy to prevent conflict of interest efficiently.

The objective of this report was to seek ways to improve instruments that help to prevent conflicts of interest. In order to achieve better prevention of conflict of interest situations in a systematic manner we recommend:

- The establishment of the clear distinction of legal regimes related to local government employees and to elected officials. It should be complemented by a political culture within which the efforts of building capacities and professional ethos of the corps of local government employees (similar to the civil service corps), as well as efforts to build political ethos, are distinctly recognized by local society and local officials.
- The system of monitoring, accountability, and sanctions for local public officials should be improved in order to maximize the negative consequences for officials who engage in conflict of interest. Integrated and uniform control mechanisms (and not separate, uncoordinated efforts) should be developed, along with clear and detailed sanctions for noncompliance to discourage officials from misconduct and to foster public trust in the mechanisms of democratic governance.
- The implementation of effective audit mechanisms by local governments themselves; a permanent evaluation process (structural and perceptual assessment) of enforcement of legal provisions; frequent risk assessment of areas susceptible to misconduct and conflict of interest (such as the public procurement process, privatization, land management, and the use of public property) are strongly advisable.
- Risk assessment can help identify the various obstacles to conflict of interest reforms, such as disclosure policy versus personal privacy; complicated and time consuming procedures of public procurement versus effectiveness and efficiency of public activities; “certificates of integrity” in the public procurement process versus a limited number of employees and contractors; and duplication of power rules against a small number of qualified and talented people in the

public sector. Audit mechanisms and risk assessment should not only prove that conflict of interest reforms are important by themselves. They should also be a stepping stone for future employment of the most talented people in the public sector and for the economic development of the country.

- Efficient legal remedies should be adopted against unfair decisions on granting local concessions and licences, awarding economic subsidies, giving tax breaks, and land management. It is self-evident that, because the above mentioned sensitive areas are subject to the highest risk of corruption, the effectiveness of these procedures needs permanent evaluation, and their enforcement should be under intense administrative supervision and court control.
- It is essential for the good functioning of local society to regulate the legal obligation for all local officials to file a declaration of their private interests. It should be noted that these regulations must include detailed sanctions for non-compliance or inadequate filing. We emphasize that these declarations should be accessible to the general public, since administrative audit is not sufficient.
- The public integrity system in local governments should be based on the assumption that officials can be encouraged to behave with integrity rather than being discouraged by the threat of sanctions for engaging in conflicts of interest. Therefore, codes of ethics for councilors as well as for local government employees, should be adopted by local authorities. However, in some countries it is preferable to introduce an obligation for the mandatory adoption of codes of ethics in the national regulation, since elected officials in local governments are very resistant to the adoption of such codes. The importance of codes of ethics is that they can promote an understanding of the concept of conflict of interest by public officials and local society in all levels of government.
- In the context of effective prevention of conflict of interest situations, it is of fundamental importance to integrate the institution of withdrawal into the code of administrative procedure or into the code of ethics. This institution may be very useful when local government officials withdraw on their own from the decision-making process, should doubts arise on their fairness due to a potential conflict of personal or institutional interest. This institution should oblige not only government employees but also councilors and heads of local governments to withdraw from the decision-making process in which they take any interest. The institution of withdrawal seems to be a more appropriate instrument in small communities than the regulation on “duplication of power.”
- In order to ensure that conflicts of interest are reported, the legal protection of officials who report on cases of corruption or conflict of interest should be regulated in national legislation. We recommend that the reports on potential conflict of interest situations could be submitted to an independent, specialized body on ethics issues, such as a Commission on Ethics.

- The Commission on Ethics should be vested with adequate authority for investigation and guidance of conflict situations and for suggesting for sanctions by the relevant administrative agencies. The commission could help to make a judgment as to whether conflict of interest is or isn't present in specific cases.

The Commission on Ethics should also have the authority to make structural and perceptual audits and risk assessments in sensitive areas of conflict of interest in the public sector. To apply efficient measures to prevent corruption and conflicts of interest, a permanent evaluation and assessment by the independent members of such a committee would be necessary. Such a commission would not replace the Ombudsman, the National Audit Office, or the Ministry of Interior but could help to professionalize the process of enforcement of conflict of interest regulation as well as the process of measuring its effectiveness.

- A wide-ranging implementation of transparency and openness of local government activities could counteract conflict of interest situations and help investigation. In our opinion, transparency of public activities in local governments would be the best way for local society to create a conducive social atmosphere in favor of prevention measures, since widespread public disapproval of these phenomena would be crucial for the efficiency of the measures.
- The independent mass-media should exercise the most important role in fostering a social atmosphere opposed to corruption and conflict of interest. It is self-evident that the independence of local media should be preserved. We emphasize that it is very important that local media mobilize public opinion to scrutinize the daily activities of local governments, to monitor the government's expenditure and land management policies, as well as to receive adequate and timely disclosures on the government's fiscal activities and other relevant information. Such an active role of the local media may result in a smaller risk of corruption and a lower incidence of conflict of interest, while promoting greater accountability and legality. Consequently, the active role of the media in local democracy and public control over the performance of local governments could be realized in practice.
- Special attention and sensitivity to conflict of interest problems that emerge in small communities should be put into public policy strategies. The surveys exploring these problems could help to introduce special regulation that would be more adequate to activities of local governments in small communities. For instance, the immediate introduction of "duplication of power" provisions may have "counterproductive effects in a context where the problem of conflict of interest is poorly understood and where the pool of political and official talent is small."³⁴
- Clear procedures of human resource management based on merit, expertise of candidates, and the rules of competition should be implemented in local

governance, in order to avoid nepotism, favoritism, and other conflict of interest situations. In our opinion, human resources management should involve long-term contracts, reasonable salaries, a bonus system and rewards for good work performance, to motivate government employees to put public interest above their own private interests in their work.

- The main weaknesses of conflict of interest prevention were described earlier, but we should stress here that conflict of interest prevention could be improved in CEE countries by better education and training among local government officials. Also, there is a need for better socialization and monitoring of local society. In this regard, it is important to develop public awareness of appropriate standards of conduct by public officials through including them in codes of ethics disseminated by a Committee of Ethics, by universities, training centers and non-governmental organizations.

It seems evident that in CEE countries many activities should still be undertaken by public policy makers, starting from national and local regulation, through establishing institutions, implementing new management and auditing practices, and finally, by engaging local society as a whole. Many weaknesses mentioned above could be eliminated if the problem of conflict of interest prevention is taken seriously and if the entire issue is regulated by one integrated system instead of separate, fragmented regulations.

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NOTES

¹ Monitoring, p.52.

² The Commission takes into account whether accession countries signed and ratified the Council of Europe Criminal and Civil Law Conventions on Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials; and whether they have aligned legislation with the requirements of the 1995 Convention on the Protection of the European Communities’ Financial Interests and its two anticorruption protocols, and the 1998 Convention on the fight against corruption involving officials of the European Communities of officials of the member states of the European Union.

³ Monitoring, pp.52–58.

⁴ Such country reports, for example on ethics in governance and on public sector corruption, were done accordingly to the similar scheme and were published in: “Trust in Government. Ethics Measures in OECD Countries,” OECD, 2000, based on: “Country Chapters of the Ethics Report”, OECD, PUMA/RD (99)8 and in: “Public Sector Corruption. An International Survey of Prevention Measures,” OECD, 1999.

⁵ See Table 2.2 in Bulgarian report.

⁶ Carney (1998).

⁷ Data from the country reports included in this volume.

⁸ Data from the country reports in this volume.

⁹ Between 1995–2000 the position of civil servants and local government employees was unified in Latvia.

¹⁰ Nonprofit organizations have done many efforts to establish the code of ethics for councilors and by councilors. These efforts have met poor results in Poland, Russia, Slovakia, and Latvia.

¹¹ Although the federal law “About Bases of the Status of the Elective Person of Local Government in the Russian Federation” was developed, accepted in three readings by the State Duma and approved by Council of Federation, President Putin rejected it on the basis of discrepancy to the federal legislation—the Russian report points out.

¹² Since the Law “On Status of Elected Officials in Local Government” is not accepted in Russia.

¹³ Local government employees who have the right to issue administrative acts.

¹⁴ op.cit.

¹⁵ Addressed to institutions engaged in entrepreneurial activity with some exceptions.

- 16 Institution of incompatibility in Romania means holding two or more positions by local government officials. It is sanctioned by removal from the office.
- 17 In all analyzed countries, comparatively good public procurement regulation is not sufficiently applied.
- 18 In Romania, detailed regulation is included in the Classified Information Act.
- 19 In Poland, new sanctions and restrictions were introduced in 2003, but because of very short time for their implementation, there is no evidence of how they work in practical enforcement.
- 20 But citizens rather did not request an investigation in Romania.
- 21 Sanctions as well as procedural rules should be set by regional laws; however, they have not yet been set in Russia.
- 22 In Slovakia, new proposal declarations may be opened to the public.
- 23 On the rules developed by the Council of Ethics as NGOs.
- 24 Based on "The European Code of Behavior of Local and Regional Elective Representatives."
- 25 In Romania, there is an intention to pass the code of conduct for civil servants. This code could be applied to local government employees who have the status of civil servants.
- 26 There is still a lack of mechanisms to execute and control effectiveness and efficiency of this provision.
- 27 The introduction of self-government ombudsman in Latvia is under discussion.
- 28 The institution is included in the Civil Service Act and in local government acts. According to this institution government employees who are given an order that requires violation of the law or waste of resources may request the order in written form and then refuse to carry it out under legal protection.
- 29 Kalnins, V., Latvia's anticorruption policy; Open Society Institute (OSI), Monitoring the EU Accession Process: Corruption and Anti-corruption Policy, Tieslietu ministrija, Korupcija Latvijā un tās apkarošanas sistēmas pilnveidošana, 2002.gada oktobris, (Corruption in Latvia and improvement of the system for combating it).
- 30 Lewis.
- 31 Van Wart.
- 32 Sánchez, p.164.
- 33 Gilman.
- 34 Monitoring, p.33.

The Bulgarian Experience
with Building a Framework
for the Prevention of Conflict of
Interest Situations
in Local Governments

Polina Roussinova

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The Bulgarian Experience with Building a Framework for the Prevention of Conflict of Interest Situations in Local Governments

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1. INTRODUCTION

One of the primary goals of the reforms that have been launched since 1989 in the Central and Eastern European countries was to improve the process of governance. In Bulgaria, it was only the last two Bulgarian governments¹ that have begun large-scale reforms for modernization of governance and establishment of a modern civil service. The reforms focused on the concept of “good governance” and striving for increased public participation in the policy-making process. The transformations within the governance model and administrative system were implemented through the creation of new civil service legislation, regulating both the public relationships within the governance system proper and the interaction between administration and society. Another aspect of the new legislation further emphasized the moral and ethical issues pertaining to the impartiality of administrative employees and to the supremacy of the public over personal interest. In this context, particular public attention has been drawn to matters concerning the drafting and enforcement of efficient norms for prevention of potential conflict of interest in the execution of the civil service.

The present study is based on the understanding that a thorough awareness of the issues concerning the definition and prevention of conflict of interest, both by the authorities and the public, is of crucial significance for the attainment of a higher efficiency of governance, and it further constitutes a means for the enhancement of public trust in the institutions. In this line of reasoning, the restriction of opportunities for the appearance of conflict of interest is of particular importance for the success of the reforms launched in the country, as public trust simultaneously contributes to the stability of the conducted policies and the public institutions in charge. This is especially true for local government authorities, since the public evaluation of their activities to a significant degree shapes the citizens’ attitude with respect to the importance and efficiency of the ongoing reforms in the country.

1.1 Issues of Corruption, Trust in Institutions, and Transparency Problems: Outlining the Importance of Prevention of Conflict of Interest in Bulgarian Society

Bulgaria's transition to pluralistic democracy and a market economy is tightly bound with large-scale reforms in the legislative and institutional systems. The notion of "good governance" has taken on an even greater significance, as it became evident that there are problems stemming from the lack of clear and categorical mechanisms to unite the processes from the various spheres of governance and the inability to find appropriate solutions for the corresponding practices. At the same time, the issues of corruption and the unlawful use of position for personal gains on the part of public officials have been raised persistently. Despite the implemented measures to combat corruption, these questions did not receive clear-cut and categorical answers. In addition, the lack of a structured public debate on the issues of "morality and ethics of the governance and the politics that the public expects" predetermined the evaluation of the effects of the reforms, initiated by the Kostov government, which appeared to be positive with respect to foreign policy only.

The new parliamentary majority of the National Movement Simeon II (NMS) won the elections in June 2001 by announcing its readiness for a new morality of governance and immediate changes of the political system to eliminate the afore-mentioned negatives.

The new government was formed in June 2001. It focused on the public expectations of transparency in governance and an objective approach to the creation and enforcement of the new legislative framework. Regardless of its declared intentions, as early as the first three months of the new government's taking the office, the sociological agencies registered the biggest decline since 1989 in public trust in the newly-formed government—the decline as of October was over 25 percent. This trend continued through September 2002: The government's activities were approved by no more than 24 percent, whereas disapproval amounted to over 62 percent. The data is particularly alarming with regards to the National Assembly, i.e., 17 percent approval and 67 percent disapproval.² The observed slump of the public trust in institutions directly related to the increase of public apathy. The lack of political commitment of society was most clearly expressed by the low electoral participation at the last electoral campaigns—on both the national and local levels.³

The identification of the factors that have an influence on the permanent decline of public trust in institutions has been an object of a number of surveys conducted by sociological agencies and nongovernmental organizations. Despite variations, the different surveys outline three major attitudes:

- large-scale corruption in governance;⁴

- use of government resources for personal benefit; and
- lack of effective opportunities for civil participation (other than participation in elections) in decision-making.

The public regards corruption as a particularly important and threatening social phenomenon that erodes democracy and good governance by violating the formal processes.⁵ The factors that influence the spread of corruption include a penchant for quick money-making among those in office, imperfect legislation, a lack of efficient administrative control, and blending official interests with personal ones.

Table 2.1
Public Perception of the Main Factors Influencing the Spread of Corruption
in the Country [%]⁶

	January 2000	September 2000	January 2001	October 2001	January 2002	May 2002
Penchant for fast money-making on part of the public servants in office	57.0	57.8	60.8	59.2	58.6	58.6
Imperfect legislation	35.1	40.5	39.1	38.0	43.0	39.7
Lack of strict administrative control	30.8	32.3	31.8	35.2	34.5	38.9
Low wages	47.2	41.6	33.7	32.3	38.5	36.0
Inefficiency of judicial system	24.7	22.2	27.2	28.5	32.3	31.2
Blending official duties with personal interests	28.3	32.6	25.8	31.7	26.7	26.9
Moral crisis in the transition period	18.2	17.0	18.9	21.1	18.3	16.3
Specificity of the Bulgarian national culture	5.9	4.2	5.9	4.4	5.3	4.3

The decline of public confidence in the institutions to a significant extent has been conditioned by the conviction that, during the years of transition, participation in politics and public governance was predominantly undertaken with the purpose of promoting special private interests to benefit selected social groups at the expense of the whole of society. This perception, together with the public attitude towards corruption, strengthened the impression that power is used for unlawful or unjust distribution of public resources or for personal gains only.

Simultaneously, the public holds the opinion that public institutions function with poor transparency and accountability, inefficiency, and bureaucracy. The examples most frequently cited include awarding public procurement without holding tenders, or misuses in granting licenses and permits violating legislative requirements. To a significant extent the latter applies to local authorities that, along with the central authorities, are charged with awarding public procurement contracts. Also, a large portion of the needed registrations, licenses, and permits for starting up or developing a business enterprise in the private sector are issued or controlled by local administrations. The general assessment of the administration activities is that they serve particular personal or group interests at the expense of the public ones.⁷

The presented results focus on issues of public officials' ethics, morality, and motivation by thus extending the conventional notions of corruption.

1.2 Combating Conflict of Interest—A Historical Perspective

The reforms that have been launched since 1997, without placing special emphasis on issues of preventing conflicts of interest, established a number of measures in the field, i.e., enhancing the efficiency of the governance system on the central and local level, establishing a modern civil service, and measures to prevent corruption. In practice, however, the issue of preventing conflicts of interest is mostly perceived as measures for restricting corruption.

The fight against corruption was set as a priority task of the legislative and executive power by the last two governments. The government of the United Democratic Forces used a horizontal approach, i.e., the measures to combat corruption constituted an element of all activities and development plans. The major strategic documents of the government under consideration contained specifics for the respective field measures, including eliminating opportunities for corruption and handling cases of established corruption practices. This approach was further employed in the drafting of new legislation concerning the establishment of a legal framework on civil service. In the course of implementing the Government Strategy for Establishment of a Modern Administrative Service of the Republic of Bulgaria,⁸ major laws were adopted on the administrative system's structure, organization, and functioning; the status of civil servant was determined; regulations on provision of administrative services to citizens and organizations on part of the public authorities were prescribed, as were procedures for awarding public procurement contracts. A Civil Servant Code of Conduct⁹ was adopted that laid down the ethical rules of conduct for civil servants. The State Administrative Commission¹⁰ was established with a view to ensuring the monitoring of the civil servants' status and the legality of the recruitment practices of civil servants.

The enforced legislation introduced transparency and accountability rules for the administration work, as well as rules for restricting the abuse of power, the misuse of public service for personal gains, the recruitment and promotion of civil servants based on merit, etc.

With the goal of improving public service provision, as well as transparency, accountability, and control of the administration activities, a number of initiatives were launched, such as the creation of “one-stop shops” for providing services to citizens; and the office of ombudsman was established. Presently, these initiatives are implemented as pilot projects in several municipalities.

The present government of the National Movement Simeon II (NMS) has also declared the fight against corruption its priority, and it once again uses the horizontal approach to anti-corruption measures. As early as the beginning of its mandate (2001), it adopted a National Anti-Corruption Strategy,¹¹ which provides for the introduction of mechanisms for the prevention of “conflict of interest” cases. There have also been legislative initiatives for increasing transparency in the following areas: awarding public procurement contracts, privatization and post-privatization control processes, illegal construction control, granting concessions, etc. In addition, they also introduced various, though unsystematic, regulations concerning conflicts of interest.¹²

The new government’s Strategy for Modernization of the State Administration¹³ outlines the future dimensions of administrative reform, i.e., establishing a system of state administration accountable to the public and the Parliament, developing an integrated system for human resources management, validating the competitive basis in civil servant recruitment based on a merit system, strengthening civil mechanisms for monitoring administration activities, etc.

2. CONFLICT OF INTEREST IN LOCAL GOVERNMENTS— GENERAL CONTEXT

The Constitution of the Republic of Bulgaria¹⁴ of 1991 defines the general model of public governance and distribution of powers between the central and local authorities. Bulgaria is a unitary state with local self-governance. No autonomous territorial formations may be established on its territory. The power of the state stems from the people and is exercised by the people directly and through the bodies as provided for in the Constitution. Public power is divided into legislative, executive and judiciary branches.

Practical implementation of the principles of the Constitution is tightly connected with profound political and economic reforms in the local government system. The Constitution caused a crucial change in the political vision for local governance—it introduced the concept of autonomous governance in local communities. This launched the process of decentralization and the institutional development of a system

of democratic local power in Bulgaria. The delegation of certain powers from the central to the local authorities presented the local authorities with the opportunity to use their own political and economic mechanisms for independent administration of local issues.

The constitutional concept of autonomous local power found its expression in the subsequent adoption of legislative acts, aiming at the overall implementation of the local self-governance system reform.¹⁵ Thus was created a new legislative basis for building well-functioning local self-governance and for ensuring financial autonomy. This legislative framework further includes conditions for increasing the public accountability and transparency of the local authorities, conditions for better protection of public interests, rules for action in cases of conflict of interest, as well as the ways and forms of civil participation in resolving local problems.

Improving the legislation with respect to local self-governance is based on the application of principles of the European Charter of Local Self-governance.¹⁶ The adoption of the Public Administration Act (PAA, 1998)¹⁷ and the Civil Servants Act (CSA, 1999)¹⁸ established a basis for organizational and functional restructuring, as well as for strengthening the municipal administration. The practical application of the requirements raised the level of competence and professional qualifications, but the new structure system of administration is still facing certain constraints. More importantly, there seem to be obstacles related to the promotion of municipal administration staff and the attraction of young and highly educated people to public positions. The implementation of the new status of the civil servants sets the conditions for overcoming these difficulties.

In 1998 administrative and territorial reforms were implemented that established the new district division of the country. The new 28 districts were established after amending the Administrative and Territorial Construction of the Republic of Bulgaria Act (ATCRBA, 1995).¹⁹ In practical terms, this marked the end of the administrative and territorial reform that ensured better coordination of governance on the regional level. Nevertheless, the legislators did not transform the districts into self-governing units with independently elected bodies of local power; instead, they remained territorial formations with only formal administrative mandates, actually serving as local outlets for the central government.

2.1 Overview of the Bulgarian Local Government— Structure and Function

The territory of Bulgaria is divided into municipalities and districts, pursuant to Art. 135 of the Constitution of the Republic of Bulgaria. Other administrative and territorial units and their local self-government bodies may be established pursuant to the law.

In Bulgaria, local self-governance is exercised at one level only, i.e., the municipal level.

In contrast to the municipality, the district is an administrative territorial unit for practicing regional policy, for implementation of central government policy at the local level, and for reconciling national and local interests.²⁰ Local self-governance is not exercised in the district, and no independently elected bodies are established in it.

Currently, there are 262 municipalities in Bulgaria, and they are located in 28 districts. According to data by the National Statistical Institute (2001), the population in the different municipalities varies from 1,422 persons (the municipality of Chavdar, Sofia District) to 1,173,988 persons (Sofia Municipality).

The local government body within the municipality is the municipal council, which is elected by the population of the respective municipality for four-year terms of office under due procedure, as provided by law. The municipal council consists of municipal councilors who—in accordance with effective legislative provisions—are elected under the proportionate system. The number of municipal public servants varies from 11 to 61 councilors, depending on the municipality's size.

Executive power within a municipality belongs to the mayor, who is elected directly by the population of the municipality for four-year²¹ terms of office. The municipal mayor is vested with executive powers within the municipality. His work is governed by law, by the decisions of the municipal council, and by the decisions of the population. The municipal mayors are aided by one or more deputy mayors, who are elected by the Municipal Council on the mayor's proposal.²² In the mayoralties with a population of over 500 persons, there are directly elected mayors, whereas within the smaller local areas, the municipal councilors elect the mayors.²³

The work of the municipal council is assisted by the municipal administration, whose employees for the most part have the status of civil servants, though some workers are employees under labor contract.

The local government employees²⁴ have the status of civil servants. This means that their status is regulated by law that applies to all civil servants as laid down in the Civil Servant Act. However, according to the legislation, not everyone in the administration has the status of civil servant. The status of civil servant is granted only to persons occupying senior or expert administration positions. The remaining administrative positions (i.e., technical positions) are occupied by employees under contract, i.e., under the general legal provision on labor.

Pursuant to the PAA, the positions within the administration fall into three categories: management positions, expert positions, and technical positions (art. 13, para. 2). CSA stipulates that only management and professional positions shall be occupied by civil servants, and this does not cover technical positions. At the same time, all management positions are filled by civil servants only (art. 13, para. 3, PAA), whereas not all professional positions are intended to be taken solely by civil servants—part of

them may be also filled by employees under contract. The Unified Classifier for the Positions within the Administration,²⁵ adopted by the Council of Ministers, determines which professional positions may be filled by civil servants. Thus, one must conclude that most professional positions are filled by civil servants. There is only a small portion of professional positions occupied by employees under contract.

The central executive power, the districts, and municipalities are specifically organized systems of governance, but the fact that they form, organize, and develop the process of management on the national, district, and local level, makes their interconnectivity and cooperation inevitable and required. The development of the processes of decentralization and democratization of society is unthinkable without their partnership and common action, and without the full consideration of the national, regional, and local interests.

2.2 Subjects of Conflict of Interest Regulation at the Local Level of Governance

Within the framework of the present survey, the major issues related to the regulation and practices of identifying and preventing conflicts of interest have been predominantly tackled in the context of local governance.

The major subjects of the provisions concerning prevention of conflict of interest at the local level are the local self-governance bodies and the local administration officials. In this context, we have also considered the practices of applying the legal framework to the activities of the following:

- local elected officials—municipal councilors in the Municipal Council;
- local government senior officials—municipality mayors (including mayors of mayoralties and local areas);
- local government employees (civil servants and employees under labor contract) in local administrations.

The legal framework poses a number of conduct requirements and ethical standards for the subjects listed above. It should be noted that the normative provisions in Bulgaria determine common civil service rules, which apply both to central and local civil servants. Simultaneously, it should be taken into account that the activity of the local authorities shapes the public's judgment of the reforms to a great extent.

2.3 Legal Framework Outline of Regulations of Conflict of Interest in Local Governments

The legal provisions on conflicts of interest include a number of substantive and procedural legislative acts—relating to the implementation of the civil service in general, and specifically—for separate government bodies. Also, increasingly wider application involves non-normative techniques, which are most frequently associated with the determination of ethical rules for conduct in the exercise of the public powers. The main legal sources are the provisions of the legislature and the central executive authorities, as well as the acts of local government authorities. According to the Bulgarian legal system, the acts issued by the supreme judicial bodies (i.e., the supreme courts) of the country are not deemed sources of law, since they do not provide new legal norms, but rather interpret and apply the existing ones.

The legislation regulating conflict of interest prevention, and relevant action and procedures for avoiding conflict appearance, includes the following: constitutional provisions,²⁶ international regulations,²⁷ acts,²⁸ subdelegated legislation,²⁹ municipal rules and ordinances,³⁰ and codes of ethics.³¹

The Bulgarian legislation does not provide the legal definition of conflict of interest. The various normative acts point to concrete examples, often insufficient in content, which have been deemed conflicts of interest. The very concept of “conflict of interest” is rarely used in the legal provision. The legislative framework pertaining to conflicts of interest is dispersed in a variety of acts, due to the horizontal approach in the organization of the structure of the legal framework, and is subject to significant reconsideration and revision with a view to its harmonization with the *acquis communautaire*.

The major legal problem with regard to conflict of interest regulations is the lack of an established general concept of the identification and determination of the countermeasures to this phenomenon. Simply drafting a unified normative act on conflict of interest would not be effective enough, given the Bulgarian legal tradition and legislation structure, since regardless of the adoption of such an act, its regulations should be subject to further inclusion within the respective acts that provide the requirements for exercise of the state powers.

3. SOURCES OF CONFLICT OF INTEREST IN LOCAL GOVERNMENTS —COVERED AREAS AND PROBLEMATIC ISSUES

For the purposes of the present analysis “conflict of interest” has been defined as a situation in which persons occupying public office display personal interests, those of their relatives, or those of the organizations in which they have a share, and these interests may influence the objective exercise of their powers.

Or, put in more general terms, conflict of interest exists in a case where the personal interests of a person in public office conflict with the public interest that he or she is charged to protect in the exercise of civil service—as a management body, civil servant or employee under labor contract to the administration.³²

3.1 Duplication of Powers

A classical situation where a conflict of interest arises is the case of duplication of powers, i.e., in the simultaneous occupation of positions at different state bodies, particularly in the case of duplication of posts in the legislative, executive, and judicial authorities. Duplication of powers is considered a prerequisite for conflict of interest, since it casts doubt on the objectivity of their execution, particularly when these are interdependent powers.

Measures for conflict of interest prevention stemming from duplication of powers have been stipulated both by the supreme law of the country, i.e., the Constitution, and by the legislative framework regulating the exercise of public service. The Constitution lays down categorical rules against the possibility of simultaneous occupation of public posts. These rules stem from the fundamental constitutional principle of separation of powers.

The Constitution provides the main regulations on prevention of conflict of interest concerning duplication of powers, but only with respect to the central authorities.

As far as the local authorities are concerned, specific constitutional provisions on duplication of powers are missing. As a result of this shortcoming, in the course of forming the present government of Bulgaria headed by prime minister Simeon Saxe-Coburg Gotha, there is a possibility, not regulated by the constitution, of simultaneously occupying the posts of a cabinet minister and a municipality mayor. There arose the necessity to interpret the Constitutional provisions by the Constitutional Court. The Constitutional Court announced its decision on the impossibility of duplicating the posts of a minister with that of a municipality mayor, as well as that of a member of parliament with that of a mayor.³³

The major issues concerning duplication of powers for the municipal councilors are prescribed by the Local Self-Governance and Local Administration Act (LSLAA), which is the main act regulating local government organization and activities.³⁴ The Act decrees incompatibility between the posts of municipal councilor and member of parliament, minister or district governor, deputy minister or deputy district governor, mayor or vice mayor or the occupation of a paid office at a municipal administration (art. 30). The Act also provides rules on the question of which of the two incompatible posts is to be relinquished in case of duplication. The post of municipal councilor is also incompatible with posts of the judicial system—judges, prosecutors, investigators (art.

132), the Judicial System Act (JSA),³⁵ and with the post of a judge at the Constitutional Court (art. 147, para. 5, the Constitution).

As for the municipal mayors, the LSLAA does not envisage specific regulations on the duplication of powers, thus it does not clarify the issue of incompatibility between the post of a mayor and a position with the central authorities, other bodies or administrations. The only existing prohibition is that a mayor may not occupy a senior position in a political party. By interpreting the legal provisions on municipal councilors, we may conclude that the post of a mayor is incompatible with that of a municipal councilor (art. 30, LSLAA).

A more categorical legal framework on the duplication of posts for municipal mayors is presented by the Local Elections Act (LEA), according to which mayors may not be MPs, or municipal councilors, and they may not occupy positions at public institutions (art. 37, LEA). This Act further envisages rules as to which of the two incompatible posts is to be relinquished.

In accordance with art. 132 of JSA, municipal mayors are similarly not allowed to occupy the post of judge, prosecutor, or investigator, or that of a constitutional judge (art. 147, para. 5, the Constitution).

With regard to the third group of subjects of regulation, there exist two separate legislative regimes for civil servants and employees under labor contracts. The normative acts regulating their status are also different, as are the issues related to conflict of interest. Thus, for all positions at the local administration taken by civil servants, the regime is provided by the CSA, whereas for the other employees, working under a general labor relationship the regime is provided by the Labor Code (LC).³⁶

The CSA presents a good example for the Bulgarian legislative practice of codification of regulations referring to typical cases of conflict of interest. With regards to duplication of powers, however, the law does not envisage all of the possible incompatibility cases for the exercise of the civil service. Pursuant to art. 7, para. 2, the civil service may not employ persons who are members of parliament or municipal or regional councilors.

Other cases of incompatibility connected to the occupation of civil service, which (as mentioned earlier) are provided by the Constitution, concern the incompatibility of the civil service with the posts of the president and vice-president, members of government, and judges of the Constitutional Court. Also, the civil servants may not be judges, prosecutors, or investigators (art. 132, JSA).

As far as the employees under labor contract in the municipal administration are concerned, the LC prescribes incompatibility of the simultaneous occupation of positions under labor contract and exercise of civil service (art. 327, it. 9). Besides, pursuant to the Constitution and the Election of the Members of Parliament Act (2001), members of parliament and members of the Council of Ministers shall terminate their occupation for the time of their mandate, jobs under labor contract in other organizations included. Simultaneously, occupying a position under a labor contract is also incompatible with

the posts of a president, vice-president (art. 95, para. 2 the Constitution), constitutional judge (art. 147, para. 5, the Constitution), judge, prosecutor or investigator (art. 132, JSA).

3.2 Economic Conflict of Interest

3.2.1 Involvement in Business Enterprises, Directorships, and Shareholdings

One of the most tangible issues connected with conflict of interest for Bulgarian society involves local authorities making use of the opportunities of the civil service to provide favor for personal or group economic interests.³⁷ This, together with the preferential treatment of relatives and other associates, appears to be the conflict of interest sphere that is most familiar to the public, and is rendered with categorical intolerance.

From a theoretical point of view the prohibitive criterion for commercial activity during public service is whether this service requires a full-time position or only partial and session employment, i.e., a part-time position. In the second case, a good amount of legislation allows for the simultaneous exercise of commercial activity and civil service. This is supported by the fact that usually such public positions are not paid, and they are conducted on the basis of voluntary or free participation of the persons.

The LSLAA stipulates rules for economic conflict of interest situations for both municipal councilors and mayors. The municipal councilors do not have the right to take part in the executive bodies of municipal companies, such as being director/manager, or deputy director/deputy manager (art. 34, para. 5). The law does not prohibit the implementation of commercial activity or participation in private corporate organizations, since the position of municipal councilor is carried out in the conditions of part-time employment for which there is no associated remuneration.

With regard to the municipality mayors, LSLAA envisages a general prohibition on conducting commercial activity. This is due to the fact that the position of a municipality mayor is paid and requires full employment of the person. Therefore, the participation of mayors in business activities may give rise to a number of problems associated with conflict of interest when their business activity is related to their public duties. It is also believed that their business activity “eats up” the time they need for the execution of their public duties.³⁸ Pursuant to the law, the municipality mayors (vice-mayors, regional mayors, and mayoralities included) may not carry out commercial activity within the meaning of the Commercial Act (CA, 1991), or take part in supervisory, managing or controlling authorities of companies during the time of their mandate (art. 41).³⁹

With regard to civil servants, there exists a prohibition for performing commercial activity—anyone employed as a member of the civil service may not be a sole proprietor, unlimited liability partner in a commercial company, manager or executive member of a trade company, commercial commissioner, or commercial representative (procurator) (art. 7, CSA). The LC and CSA do not state any special requirements for the employees under labor contract in the local administration. Nevertheless, such prohibitions may be stipulated in individual or collective labor contracts of the municipality employees.

3.2.2 Additional Private Employment

Similar to conditions described above, to avoid conflict of interest, the local authorities and public officials holding full-time positions may not perform activities under labor contract outside the service. But, in contrast—the bodies and public officials carrying out their functions under partial or session employment do not fall within those restrictions.

For this reason, there is no prohibition preventing municipal councilors from occupying another position outside the service, due to the part-time and gratuitous nature of the public posts which they occupy. On the other hand, considering art. 46 of the Local Elections Act (LEA), we may assume that the municipality mayor, up to termination of his mandate, is not allowed to work under contract in public establishments, enterprises, and trade companies with more than 50 percent public participation. This is a logical decision due to the full-time employment and the remunerative nature of the mayor's post.

In this respect, there are categorical regulations on local government employees—civil servants may not work under labor contracts except for teachers in higher schools (art. 7, para.2 CSA). The employees under labor contract, pursuant to the LC, may work free, without additional permission of the employer, under labor contracts in other organizations outside the set working hours, unless it is otherwise stated in their main labor contract with the municipality (art. 111).

3.2.3 Membership in Charitable, Sporting, and Other Nonprofit Organizations

Another source of conflict of interest may be the participation of local authorities and officials in various nonprofit organizations pursuing charitable, sports, educational, cultural, or ecological activities, or in syndicate organizations. Even if an official's participation in such organizations does not create direct financial or pure economic conflicts

of interest, it represents a potential source of certain non-financial interests, thus casting doubts on the objective execution of the official's respective powers or functions.

Bulgarian legislation does not provide regulations prohibiting the municipal agencies or employees from participating in such organizations.⁴⁰ Also, Bulgarian legislation does not recognize the distinction between financial and non-financial interest. The prohibition against taking part in the decision-making process is explicit only for cases when the public servant has financial interests. This legislative approach is restrictive, since it neglects a wide range of non-financial interests, which may also give rise to conflicts.

3.2.4 Acceptance of Gifts, Hospitality, Sponsored Travel

There exist some sensitive points, the nature of which are mostly ethical, with regard to the behavior and interaction of municipal public officials with citizens and organizations. These are issues such as receiving gifts, sponsorship of trips, education, etc., which have been accepted in connection with a public service, and they presume an obligation for the official to give something in return. In this context, they appear to be a source of conflict of interest.

There is an interesting survey of public opinion on issues of bribes, blackmail, and the offering of gifts in Eastern Europe,⁴¹ according to which the offering of gifts to public officials at state institutions by citizens is widespread. The majority of people think that to successfully bid for a public procurement contract, giving at least a small gift is necessary. Table 2.2 shows the percentage of survey data, comparing figures for Bulgaria, Slovakia, the Czech Republic, and Ukraine.

Table 2.2
Survey: Perceptions about Offering Gifts or Money to a Civil Servant⁴²

To get a successful outcome when a person asks an official for something, is it likely or not likely that he or she would...	Bulgaria	Slovak Republic	the Czech Republic	Ukraine
offer a small present?	84%	80%	62%	91%
offer money or an expensive present?	72%	62%	44%	81%

In terms of local self-governance, however, Bulgarian legislation contains almost no provisions in this area.⁴³ There is only one regulation relating to the civil servants, and it is part of the Civil Servant's Code of Conduct. According to the Code, the civil servant may not derive benefits from third parties if the benefit will justifiably be perceived as a result of compromising their honesty and fairness while executing their duty. It is worth

noting that the regulation is too generally formulated, and it does not provide instructions for exactly how this rule should be applied in practice. In addition, the regulations of the Code are only recommendations, and they are not backed by sanctions in case of violations. The Government Strategy for Modernization of the State Administration in particular focuses on the drafting of rules for the reception of presents and other benefits, which means that regulation in this area is still forthcoming.

3.2.5 Participation in Government Contracts

A source of conflict of interest may appear in situations where local public officials take part in contracts in which the government or another public authority is a client (i.e., a government contract). These contracts may involve the procurement of goods and services, construction, etc. Usually, the legislation deems those cases an important source of conflict of interest if a person starts to exercise a public service, and at the same time, he has the authority of executor under government contract. It is presumed that the public client under contract may attempt to influence the exercise of the public officials' duties, on the one hand, and these officials may obtain special benefits or gains by virtue of the contracts, on the other.⁴⁴

In Bulgaria, government contracts have been legislatively regulated as public procurement contracts, which have been regulated according to the Public Procurement Act's (PPA) norms. According to the act, the executor of the public procurement contract may be a person registered as a merchant solely. Consequently, prohibition for simultaneous occupation of a public office and the post of executor of a public procurement contract exists only with respect to the municipality mayors and local civil servants, since they do not have the right to conduct commercial activity. However, such a prohibition does not apply to municipal councilors and employees under labor contracts.

3.2.6 Restrictions after Termination of Service

Once a person leaves a post or position, the imposed restrictions apply regulating the behavior or activities of the public official for a certain period after withdrawing, retiring or resigning from public office. The aim of these rules is that the persons should not derive personal gains from their former relationship with public authorities, contacts, information, etc., that have been obtained during the course of occupying the office. Often, the prohibitions apply to future employment in organizations with which those public officials have been in a direct working relationship or had significant official dealings in the year preceding their departure from office. There are also prohibitions against the use of official information for personal gain after vacating the post.⁴⁵ Such

rules most frequently are provided by the codes of conduct for public officials, or they are stipulated in their contract.

In Bulgaria, such regulations in the area of local self-governance are present for local administration civil servants. However, there are almost no such regulations for municipal councilors and mayors. The only such regulation is in the new Privatization and Post-Privatization Control Act (PPCA),⁴⁶ which prohibits the municipal councilors and members of the directorship of specialized municipal privatization bodies from acquiring property in privatized companies if they have taken part in privatization agreements. This prohibition refers to the period of occupation of the respective position, as well as the period of one year after vacating the post (art. 23). The general labor legislation lacks such restrictive rules.

The Civil Servant's Code of Conduct (CSCC) contains a general prohibition for civil servants, who after leaving the civil service shall not undertake actions through which they may take unlawful advantage of their previous position in any way. The code also has a prohibition for making public certain facts or circumstances to which outgoing civil servants have had access (section IV, Personal Conduct, it. 3 and it. 4). However, the regulations are too general, and, consequently, difficult to apply in practice.

3.3 Institutional Conflict of Interest

The local government bodies in Bulgaria exercise control over most of the social and cultural activities and institutions on the territory of the municipality, i.e., nurseries and kindergartens, orphanages, social care homes, polyclinics and museums; or they share the financial responsibility of running the school system with the government. In addition, the local government agencies manage a considerable number of trade companies that ensure basic public procurement to the local community, including public transportation, utilities, establishment of infrastructure, welfare, and maintenance of parks and buildings. These activities transform the local government bodies into active agents of economic life. Often, the municipalities are among the most powerful economic agents with their own specific economic interests.

The economic interests of the municipality may create a potential source of conflict of interest. In the course of managing municipal companies, the municipality encounters problems of real economic life. Conflict appears in cases when municipal public officials make decisions that have been based on the private economic interests of the municipal companies and that conflict with the public interests, as the latter are to be protected by the very same municipal bodies. What is important in such situations is that such conflicts should be managed in a manner that does not allow a compromise in the public mission of local institutions and holds up the protection of public interests.

Bulgarian legislation contains separate provisions on the restriction of so-called institutional conflict of interest. These provisions have been horizontally incorporated into various regulations, depending on the public sphere that the regulations focus on.

The LSLAA envisages incompatibility for the simultaneous occupation of the posts of municipal councilors or municipal mayors and executive positions in municipal companies. With respect to municipal mayors, this prohibition also includes private trade companies. The Municipal Property Act (MPA)⁴⁷ provides that the management of municipal trade companies shall be regulated by an ordinance of the respective municipal council. In practice, such regulations are missing at a significant number of municipalities.

3.4 Conflicts Involving Family and Personal Relations

Largely due to the heritage of the former communist regime, it is a common phenomenon in Bulgaria that preference is given to relatives or other associates in cases of appointment to service, promotion, and other forms of favoring family and friends. In legal theory, this phenomenon is known as favoritism or nepotism.

Favoritism is a specific source of conflict of interest and is associated with using public authority to benefit close family members or other relatives, mostly by granting them certain positions. The restriction on favoritism is not intended to ban the employment of relatives at all cost, since often such persons may be the most capable and qualified for the position. Its purpose is more to restrict the possibility of using one's position to offer jobs to associates or relatives for personal gain.

Bulgarian legislation does not offer a thorough consideration of the issue of favoritism in respect to municipal officials. LSLAA requires that municipal councilors do not take part in voting or decision-making on matters that touch upon the interests of their spouses and relatives, up to the fourth degree (art. 37). For the mayor of a municipality, however, such regulations are missing. Regarding local administration civil servants, there is a prohibition against employing persons for civil service who are in the position of direct hierarchical relationship of leadership and control with a spouse, a relative of a direct line of descent to the fourth degree, or any relation by marriage to the fourth degree (art. 7, para. 2, it. 1, CSA). As far as the municipal employees under labor contract are concerned, there are no specific provisions on restricting favoritism.

The PPA, and the ordinances of the municipal councils on the order and conditions of holding tenders and competitions for acquiring, running, and managing municipal property, place specific requirements and restrictions on the membership of the evaluating commissions. When holding tenders and competitions for assigning municipal property and public procurement, persons in a family relationship with the participants in the competitions and tenders shall not be members of the commissions.

There are problems with respect to applying the CSA's restrictions for employment to the civil service in the case of small municipalities with a limited number of residents (in Bulgaria there are municipalities with populations of under 2,000–3,000 residents). It is exactly due to the small number of residents in certain municipalities that instances of family favoritism in public service occur, and in some cases it would be very difficult to find the appropriate person for the specific position who is not in some way related to another person in civil service. Consequently, an opportunity should be available for employing persons regardless of their family relationships under such circumstances, provided that the person in question has the necessary qualification for the position.

3.5 Use of Official Information for Personal Gain

The prohibition against using official information is intended to prevent an official from the acquisition of personal profit through the use of confidential information to which the official has had access in his or her official duties. Such duties concern the official's ethical conduct, and thus they are more frequently regulated by the codes of conduct. The prohibition of using information for personal gain does not apply to information whose nature is public and accessible to all, but only to confidential official information.

According to the Access to Public Information Act (APIA), central and local authorities are obliged to give the citizens and organizations access to collected and stored public information, i.e., acts, protocols of decisions, contracts, as well as all other kinds of information that is not deemed confidential or is in some other way protected by law (art3, APIA). However, there are no explicit prescriptions for these authorities as to the manner in which they are to personally use official, confidential information, and how they are supposed to refrain from using it for personal gain.

As for local government employees, the issue is more thoroughly considered for civil servants. The employees under labor contract are not subject to specific legal provisions concerning the use of official information for personal uses, except for the general requirement against distribution of confidential data about the employer and the prohibition of abuse of the employer's trust (art. 126, it. 9, LC).

The ethical norms of conduct for the use of official information by civil servants, those in local administrations included, have been provided for in the CSCC. The regulations concern the conduct of the civil servant in disseminating public information. On the one hand, under the APIA, the civil servant bears the responsibility for the provision of timely, authentic and comprehensive official information to citizens. Along with this, pursuant to CSCC, he has obligations for confidentiality in dealing with information and he must avoid harming the activities of the institution—the civil servant is obliged to deal with any and all information and documents acquired as a result of his position⁴⁸ with due confidentiality.

The CSCC prohibits civil servants from using information acquired in the execution of their official duties for their own benefit or the benefit of someone related to them (CSCC, section II, Professional Conduct, it. 4 and it. 5). The CSCC does not stipulate sanctions for failure to conform to these prohibitions.

3.6 Use of Local Government Property

With the amendments to the Constitution of 1991, the municipalities acquired the right to own property (art. 140) that should be used for the interest of the local community, a change that facilitates the development and strengthening of local self-governance. Thus, the use of municipal property by local authorities and officials for personal, family or corporate interests contradicts the purpose of this property and gives rise to occasions for conflicts of interest. Most often, these situations concern the ethical conduct of the public officials at local authorities that manage municipal property. Because of this, it is common practice that this is largely regulated by codes of conduct (The CSCC contains the most general rules for these problems).

Often, however, such conduct by the agencies or officials may result in considerable harm to the public interest and a violation of the principle of equality of citizens before the law. This is particularly true for cases when municipal property is being sold or rented without the appropriate tenders or competitions as required by law, or without following the rules and procedures for their execution. Due to the lack of transparency of such action at municipalities, a favorable environment has developed for abuses, corrupt practices, and unlawful leasing of municipal property to insiders (e.g., municipal officials and their relatives or associates). Therefore, more thorough and concrete legal norms, i.e., not just ethical regulations, are required for regulating the use of municipal property by local public officials.

In fact, experience shows that the leasing of municipal property without tenders and violations of the relevant law are quite a common municipal practice. According to a Report of the National Audit Office,⁴⁹ which describes inspections of municipal activities for the period between January 1, 2000 and March 31, 2001, the following conclusions have been drawn:

- from the inspected 52 municipalities, only 14 have followed the procedures for leasing municipal property, established by the Municipal Property Act (MPA); in a great number of municipalities, real estate has been leased without holding tenders or competitions, in violation of art. 14, para.1 of MPA;
- the mayors of several municipalities have continued their rental agreements of municipal property without the existence of decisions, or in violation of the municipal councils' decisions over the set deadline;

- in a lot of cases, rental or sales agreements have been made at prices much lower than the base price set by the municipal council, or sales contracts have been made with buyers who offered the lowest price;
- municipal real estate rents in arrears have not been collected, and no action has been taken for termination of contracts with nonpaying tenants;
- revenues from property have been entered into budgets at less than real value, due to inadequate decisions of the municipal councils and violations of the normative acts.

The National Audit Office registered poor municipal discipline in compliance with legislation on managing municipal property, as the situation that creates potential opportunities for abuse.

In addition, the legislation lacks codified rules or minimum standards for prohibiting membership in commissions that make decisions on the management of municipal property (the relationships for giving municipal property to third parties have been left to be regulated on an individual basis by the separate municipal councils—art. 8, para. 2, MPA). This situation creates the opportunity for the abuse and unlawful use of municipal property.

3.7 Involvement in Political Party Activities

A basic principle for the implementation of the civil service (art. 116, para. 1, the Constitution) is the political neutrality of the officials and the supremacy of the public interests. This principle aims to prevent the use of civil servants of local or central authorities for the promotion of private political interests, for political appointments or dismissals or any other form of interference with the work of public or municipal institutions by political parties.⁵⁰

This principle is further developed and specified in the CSA according to which, in their official duties, civil servants may not represent and protect the interests and will of the political party of which they are a member (art. 42, para. 2). The act bans the civil servant from holding a leading or executive position in a political party (art. 7, para. 2, it. 2, CSA). Similarly, the LC prescribes a requirement for employees under labor contract to exercise their rights and obligations without direct or indirect discrimination, granting privileges or imposing restrictions on the basis of their political beliefs.

Violation of the obligation of political neutrality in carrying out official duty is difficult to prove and difficult to control. Although there are certain general sanctions for the violation of the CSA and LC, they are difficult to implement in practice. Because of this, legislatures in many countries have developed special mechanisms and procedures, for both central and local authorities, for reporting violations that public officials commit in their official capacity, or other situations of conflict of interest. These procedures also

stipulate the respective protection and confidentiality of the officials who report on those violations. Yet similar legislation is not popular within the Bulgarian legislative framework (such regulations largely exist only in the penalty procedures for protection of the persons who provide evidence of a crime).

As for municipal councilors and mayors, the LSLAA does not contain general requirements for political neutrality. Art. 41 only prohibits mayors from taking part in the leading bodies of political parties. In performing their public duties, the municipal councilors and mayors should take into account the interests of the entire local community. Nonetheless, they have been nominated by political parties that pursue their political programs and bear political responsibility. This makes officials naturally dependent on party politics, and they should not be expected to be politically neutral. Furthermore, political neutrality is not needed, since party membership constitutes a guarantee for the consistency of the activities of the municipal councilors and mayors. They are bound both to their party and voters with the respective political program and strategy, which they should follow and implement. Thus, their political dependence, matched with close contact with citizens on the local level, appears to be a productive factor for control both along party and citizen lines. Because of this, specific regulations prescribing political neutrality for municipal councilors and mayors are not needed.

3.8 Use of Influence and Lobbying

In the most general terms, the use of influence represents a situation in which an entity does not have the respective powers but knows a particular official to whom these powers have been entrusted, and through using his own position (for example that of a higher authority), exerts impact on this official in order to reap personal benefits for himself or somebody else. In other words, the obligation to act in the public interest does not refer exclusively to those who exercise their powers, but also to those who use their official position to influence public officials in exercising their authority, and/or in making certain government decisions.⁵¹

Bulgarian legislation does not contain specific provisions on these relationships at the local or central level. There are only general recommendations in the CSCC that stipulate that civil servants should not use their official position for their own or another person's benefit (section III, Professional Conduct, it. 3).

A specific form of exerting influence is lobbying. In the most general terms, it represents mediation for the benefit of personal or corporate interests aiming to influence the legislative process.⁵²

In Bulgaria, there is forthcoming discussion about the Publicity and Registration of Lobbyists and Lobbying Activities Bill, which in July 2002 was introduced for approval by the National Assembly. The purpose of the bill is to create clear-cut rules

for transparency and publicity in lobbying activities, with the aim of restricting corrupt practices and shielding government from pressures by individual and group interests. The bill also stipulates lobbying rules for local government authorities. Explicit prohibition has been established for performing lobbying activities by public servants at central or local administrations, as well as prohibitions and restrictions for lobbying, donations, and provision of money or other property benefits by lobbyists, to benefit public officials.⁵³

3.9 Recruitment and Promotion of Local Government Employees⁵⁴

The problem with the recruitment and promotion of public officials at local administrations corresponds to the issue of favoritism. The provisions on the procedures for recruitment and promotion of public officials lay down clear rules and are based on the unbiased evaluation of qualifications, experience, and accomplishments. At the same time, there still exist problems of the efficient application of those regulations that are most frequently interwoven with the phenomenon of favoritism and favoring relatives in the administration at the expense of qualifications and experience. Such forms of conflict inevitably undermine respect and trust in local authorities. Such conflict prevention is related to the need of administrative capacity to implement normatively determined procedures and to foster the competitive basis in recruiting public officials.

In this respect, the Bulgarian legislation has taken a step forward with the adoption of the Ordinance on the Conditions and Order of Attestation of the Servants in the State Administration.⁵⁵ It covers all public officials working in the central and local administrations, both on staff and under contract. The ordinance introduced rules for assessing the performance of civil servants through annual performance evaluations, which then serve as the basis for promotions. The purpose of the evaluation is to improve the administration activities through efficient performance management, establishment of the degree of the officials' professional qualifications, fair remuneration based on merit, and transparent procedures for professional and career development (art. 1, para. 2).

A transparent evaluation procedure has been established. It is implemented by an evaluating supervisor under the supervision and control of a controlling supervisor and representative administration syndicates. The procedure of evaluation and the criteria of performance assessment have been drafted in detail.

As for the procedures for employment in civil service at the central and local administrations, the CSA is subject to critique due to the poor presence of the competitive basis in recruitment procedures, a situation that may create an environment for favoritism. Currently, recruitment without competition under the CSA is accepted as a general means of recruitment, whereas competition has been treated only as an option, which the recruiting authority might use at their discretion (art. 10, CSA). Similarly, the LC

mandates holding competitions only for positions that have been explicitly prescribed by law or by an act of the Council of Ministers (art. 83 and art. 90, LC). In all other cases, the employer signs labor contracts at their own discretion. Amendments to the CSA have been prepared to strengthen competition in recruitment, particularly when it comes to filling executive positions.

4. PROCEDURES, INSTITUTIONS, AND INSTRUMENTS FOR THE PREVENTION OF CONFLICT OF INTEREST

The main purposes of the mechanisms and procedures for preventing conflicts of interest in local government are the creation of effective guarantees of objectivity in service performance and the restriction of opportunities for local public officials from reaping personal benefits from decisions and actions related to municipal matters. Therefore, those mechanisms and procedures aim to achieve:

- prevention of the emergence of conflict of interest situations—this may be achieved by means of conflict prevention rules (preventive measures);
- effective procedures for the resolution of conflicts of interest when they have already occurred—by establishing norms of control for the solution of already emerged conflict situations (post-control measures);
- assisting the local administration in identifying situations where conflicts of interest may emerge—this is achieved by guidelines and ethical standards in the execution of public responsibilities and obligations by public officials (guidance measures).

There is a variety of conflict prevention mechanisms and procedures. This chapter describes the most typical and effective prevention mechanisms, with their specific characteristics, in the context of Bulgarian local government practice.

4.1 Rules for Decision-making and Withdrawal from Decisions

The measures for removal or withdrawal from the decision-making process, together with measures for disclosing and declaring situations of conflict of interest, are among the most widely employed, efficient mechanisms for maintaining fairness in the service performance and prevention of official misconduct for personal gain. With respect to local public officials, these rules have not been sufficiently developed by the Bulgarian legislature.

LSLAA imposes restrictions on municipal councilors on participation in decision-making when they have at stake their own property interests or the interests of their

relations—spouses and/or direct or in-law relatives, down to the fourth level. There are almost no such provisions regarding the mayor of the municipality.

In this respect, there is only Art. 9 of the Administrative Procedure Act (APA)⁵⁶ presenting a general rule that could be applied to the mayors as well as to local officials in managerial positions. Pursuant to this rule, a public official participating in the process of issuing individual administrative acts (i.e., acts affecting rights and obligations of individual citizens or organizations), who has a vested interest in the outcome of the procedure or has relationships with interested individuals or organizations which cast doubt on his impartiality, may not participate in the procedure. In such cases, this official should withdraw from the procedure at his own initiative or at the request of the interested parties. However, this requirement refers only to procedures for issuing individual administrative acts, and not to other actions undertaken by local government officers.

Although the two acts, i.e., the LSLAA and APA, prohibit the participation of municipal officers in such decision-making, they do not determine concrete procedures for removal or withdrawal of the persons from decision-making. The application of such provisions is seriously impeded by the absence of a legal definition of the concept of property or financial interest. These shortcomings in the provisions make the practical application of the mechanisms for non-participation in decision-making difficult.

The legislation of other countries offers various solutions to the definition of financial interest: a percentage is defined as an indicator of the presence of financial interest, for instance, a 10 percent share or supervision in commercial companies and organizations. Other legislations assume that there is financial interest in any form of ownership or relationships of management and control in commercial organizations, regardless of the size of that interest.

With respect to civil servants occupying managerial positions in local administrations, the CSA does not contain rules for removal from decision-making in the management process. Also, the CSCC does not contain special rules for withdrawal. The code stipulates only the general requirement that civil servants should be guided solely by the law and the public interest and should present all relevant information when they submit a decision-making proposal to the local authorities. Here again, the above-mentioned provision of art. 9 of the APA may be applied, but only with regard to the procedures for the issue of individual administrative acts and not with regard to other civil servants' actions.

Separate rules restricting participation in decision-making are included in various legal acts. The PPA and its supplementary ordinance require that the members of the evaluating commission on public procurement should have no property interest in the execution of the contracted activities, they should not be members of executive bodies of the procurement authority, and they should not be related to the applicant (including spouses, relatives, employer or employee, persons where one is in the management of the

other's company, associates, commercial representatives or grantors etc.). The PPPCA demands that the municipal councilors and the management of the specialized municipal privatization bodies disclose conflicts of interest and withdraw from decision-making in privatization procedures when they or members of their families have commercial, financial, or other interest in the privatization deal (art. 25).

4.2 Disclosure and Declaration of Private Interest

It should be noted that Bulgarian legislation has hardly any rules for disclosure and declaring the presence of private interest and potential conflict of interest on the part of local public officials. This is another reason why the Bulgarian experience cannot be thoroughly analyzed. There is only an obligation for civil servants in municipal administrations to declare their property status when assuming office and then annually (art. 29, CSA). They are obliged to declare only their real estate, and they do not have to declare the assets of their spouse or children. The authority appointing the relevant official is the institution that administers the declarations and imposes disciplinary sanctions when the official fails to submit his/her declaration. However, public access to the declared circumstances is restricted—it is possible only with the civil servant's permission.

Considering the practices of identifying and disclosing conflicts of interest, some good decisions from foreign legislation can be mentioned. The legislations of other countries most often use two forms of disclosing the presence of private interests. The first one is the ad hoc announcement of an already existing financial or non-financial interest for a concrete case. The second form of disclosure represents the advance notice of an interest in view of possible conflicts which may arise in connection with a particular person. This is performed by declaring the person's interests, both when first assuming a position and annually. The declaration of interests is done in a special public register of interests.⁵⁷

In accordance with Bulgarian legislation, there is a public register where persons occupying senior public positions declare their property and liabilities (Publicity of the Property of Persons on Senior Public Positions Act (PPPSPPA)). However, the obligations of this law do not apply to municipal councilors and mayors.

Similar to other European legislations, a broad range of items are subject to declaration in the register, including real estate, vehicles, yachts and airplanes, company shares, payments exceeding a certain limit, training, sponsored trips, income and its source, as well as financial liabilities. The private interests of spouses and minors should also be registered. According to the law, however, not subject to declaration is the performance of managerial functions (i.e., manager, member of a board of directors, member of an executive or supervisory board etc.) in organizations, or participation in nonprofit organizations. Besides, although by definition the register is a public document,

citizens have no direct access to its data but can only get information through the media or public administrations. No sanctions for failure to submit a declaration on time are established.

According to data published by the head of the National Audit Office, which maintains the public register, 52 people have not submitted their declarations for 2002 after the expiration of the respective deadlines. It should be pointed out that senior public officers ignore this obligation.

4.3 Other Measures Assisting Prevention of Conflict of Interest

4.3.1 Winning Public Procurement Contract Restrictions

Local government administrations conduct public procurement procedures for activities, deliveries, or services related to local needs. The procedures for contracting public procurement are among the local activities with the highest corruption risk, a risk of misguided application of the procedural rules and opportunities for abuses.

Because of those risks, the PPA intends to create conditions for transparency, competition and guarantees for the unbiased execution of the procedures for the selection of contractors of public procurement. Those rules are also a guarantee to prevent conflicts of interest in awarding procurement contracts. Thus the law states that the candidates should be evaluated and selected only on the basis of the requirements that are previously announced in the tenders (art. 41). Incompatibility criteria for the post of an evaluating committee member are listed in detail (art. 38), and the invitations to tender are published in the State Gazette and in a local or national daily newspaper (art. 34, para. 5). Another guarantee against abuses is the possibility to appeal the actions of the awarding authority (art. 56, para. 1). The National Audit Office and the administrations at the Agency for State Internal Financial Control monitor the authorities' actions and their compliance with the law (art. 57, para. 1). Similar guarantees are also provided in the Ordinance on Public Procurement Procedure under the threshold defined in art. 7, para. 1 of PPA.

Nevertheless, the Act and the Ordinance are subject to criticism by private business representatives, due to the lack of established necessary organizational prerequisites for applying the principles of transparency in the procedures, on the one hand, and to the incompetent implementation of the law by the procurers, on the other.

In fact, in their capacity as public procurers, local government authorities substantially violate the regulation. This is the conclusion of the National Audit Office reports for the period of January 1, 2001–December 31, 2002 in several municipalities (the municipality of Sapareva Banya, the municipality of Sofia and its areas). According to these

reports the violations most often committed are related to public procurement, carried out by local authorities who do not follow the procedures provided by the PPA.

4.3.2 Privatization and Concession Rules

Privatization and concessions conducted by local authorities are among the activities that carry a potential risk of corruption, blackmail, opportunities for personal gain and other abuses. The rules for transparency and control are also very important in their regulation. When it comes to ensuring objectivity of the actions of the municipal officers and limiting the opportunities for promoting private and corporate interests at the expense of the public interest.

In March 2002 a new Privatization and Post-Privatization Control Act (PPPCA) was adopted in Bulgaria. The act regulates the manner of privatizing municipal and public commercial companies. Since it is a comparatively new one, it is too early to evaluate its efficiency, but the rules it has established for the privatization procedures can be deemed much more transparent and useful in creating prerequisites for equality among investors. Negotiation with a potential buyer (a limited circle of entities) and privatization by worker-managed companies are no longer among the methods of privatization, i.e., the least transparent privatization procedures under the old law, very often used by the state and municipalities have been eliminated.⁵⁸

The privatization methods provided in the new act are of public character only (public offering, public tender, among others, art. 31 and art. 32). As it was pointed out in 4.1 of this report, the law contains special provisions that pose restrictions on municipal councilors and the management team of the specialized municipal privatization bodies, and members of their families, to prevent their acquiring property in privatized companies when they have participated in privatization deals, while occupying the respective position and within one year's time after withdrawing from the post (art. 23). In cases when such persons participate in a privatization deal from which they or members of their families have commercial, financial or other interest, they are obliged to disclose this circumstance and cancel their participation in the decision-making on that particular privatization deal (art. 25).

As far as the municipal concessions are concerned, being the instrument for awarding municipal property, the regulation and rules for its implementation are contained in the MPA. The regulation, however, has certain imperfections affecting the transparency of the procedures related to municipal concessions. It is required that the conduction of a competition or a tender should be regulated in an ordinance issued by the separate municipal council. The law does not contain minimum standards for transparency or an explicit opportunity for judicial appeal of the municipal council's decisions on the selected concessionary.

4.3.3 Political Donation Restrictions

The rules and mechanisms for financing the political parties are also of importance in conflict of interest prevention because the financing of parties is a frequently used form of imposing private interests and their promotion as public. Besides, the financing of parties and their election campaigns represents an essential factor of corruption in Bulgaria.

In 2001, the National Assembly adopted a new Political Parties Act (PPA), which repealed the old and more imperfect one of 1990 and regulated in detail the rules and limitations on the financing of political parties. On the basis of annual reports submitted to the National Audit Office by the parties, the office, exercises general control over the financial input of parties. Also, the law restricts anonymous grants over a certain amount.

4.3.4 Anticorruption Measures

The municipal public servants who are in direct contact with the citizens in relation to the services that are most demanded by a municipality's population are exposed to a high risk of corruption. Corruption at the local level is assessed by many experts as considerably higher and more frequent than corruption at the higher levels.⁵⁹ Besides, corrupt practices may also lead to long-term economic and social consequences for both the particular municipality and society as a whole—for example, the negative consequences from unscrupulous privatization of a municipal enterprise, incorrectly issued licenses, or assigning public procurement to incompetent persons or organizations.

Therefore, in addition to legislative amendments introduced during recent years, to criminalize various acts of corruption (including giving or receiving bribes, blackmail, and money laundering) and the establishment of special institutions to combat corruption and financial abuse (such as the Bureau for Financial Investigation Agency at the Ministry of Finance established in 2001), there have been various civil initiatives at the local level as well.

As a result, special mailboxes and hotlines to report cases of corruption have been created alongside the mediation groups—experts who mediate between citizens and local authorities on illegal actions or omissions of actions by municipal councilors when delivering administrative services. A number of non-governmental organizations have turned the fight against corruption into the main objective of their activities: they undertake various activities of anti-corruption and an educational character; they publish and distribute civil manuals for administrative services, etc. All these initiatives aim to foster an attitude of public intolerance to corruption and to raise the

level of citizens' familiarity with their own rights and the rights and obligations of the administration.⁶⁰

4.3.5 Accountability and Transparency in Providing Public Services

An important prerequisite for the work of the elected municipal bodies and the municipal administration in the public arena is transparency of their work in providing public services. A step in this direction is provided by the Administrative Service to Physical and Juridical Persons Act (ASPJPA) adopted in 1999.

The law stipulates that each administration should introduce internal rules for the work and accountability of its officers (art. 6, para.1, it.3). In addition, special units have to be established for applications by citizens for administrative services (art. 6, para.1, it.1), the so-called one-stop-shop. Through those units, people can follow the course of actions undertaken by the administration on their applications, quickly and directly.

To carry out the provisions of the law, many municipalities have undertaken the building of municipal centers for information and services. These units are expected to raise the direct civil control over time schedules, reduce the time for delivering services and the expenses of both citizens and the administration; and increase the transparency in local government. However, such units have so far been introduced only in a small number of pilot municipalities. Also, no uniform service standards have been developed yet, and not all municipal administrative structures apply the established model for administrative servicing.

4.3.6 Public Access to Official Information

The local policy making process in Bulgaria is subject to civil control by force of the normatively regulated publicity of governance. By means of various legislative norms, the work of making important decisions, discussion of local bills and voting have been made transparent.

Thus, municipal council sessions are open to the public and the media, and the decisions that have been reached are displayed at the municipal building and brought to the attention of the population at large in the press and the electronic media (art. 22, LSGLAA). Moreover, the Access to Public Information Act, adopted in 2000, comprehensively regulates the right of free access of citizens and organizations to information generated and maintained by the central and local authorities. The latter are obliged to publish updated information on the acts they have issued (decisions, regulations, ordinances, orders), as well as a description of the functions and responsibilities of the

respective administration. They are also obliged, when requested by citizens, to provide free access to information that they are holding (with the exception of cases of classified information, protected by law).

The law presumes the possibility of limiting access to information on opinions, references, statements, and consultations, given in the process of adopting acts or decisions. The access to such information would ensure greater transparency with regard to the principles and motives that have guided the authors of the acts, and it would ensure more effective public monitoring of the prejudices and promotion of private interests in the performance of local authorities.

Apart from giving legal guarantees of transparency and free access to information, new practices and initiatives more broadly provide municipalities an opportunity to citizens about decisions and activities thereby increasing the transparency in the work of local authorities. Here are the most interesting initiatives by the municipalities in this respect:

- establishment of Internet sites of the municipalities and publishing their own information bulletins containing ordinances, decisions of the Municipal Council, information on renting municipal property, announcement of competitions, tenders, and their results;
- public discussions of the municipal draft ordinances are organized;
- an opportunity for direct communication with the mayor on the municipality's Internet site through electronic mail or forum discussions, where citizens ask questions and receive answers directly (mayoral receptions);
- annual reports to the public on the conducted activities during the year and the way the municipality was governed—meetings where citizens can ask questions, and publish a report in a local newspaper;
- “open day” is organized for all those wishing to get acquainted with the everyday work of the municipal administration, to ask questions and make proposals for optimization of the activities.

4.3.7 Civic Participation in Local Decision-making

Motivation for civil participation in local governance is still weak, and that is why public control over local decision-making is weak. On the one hand, the municipalities are unwilling to turn to the opinion and expertise of non-governmental and branch organizations. On the other, legislation in the field does not establish enough mechanisms for public participation in decision-making (with the exception of certain more formal rights, including the fact that one-fifth of the local population has the right to summon the municipal council, hold referenda on certain matters of local importance and general assemblies of the population).

Nevertheless, a tendency of increased civil initiatives to participate in the work of local authorities has been perceived in recent years. With the involvement of various non-governmental organizations, mechanisms for joint activities and dialogue are being worked out. Those mechanisms facilitate a broader access by citizens to the local self-governance bodies and a better control over their performance, openness, and transparency in decision-making. Here are some of the initiatives:

- creation of initiative committees with representatives of non-governmental organizations, citizens, and municipal bodies for joint discussions of local priorities;
- holding training seminars for mayors, municipal councilors and administrations, dedicated to various aspects of civil participation in local self-governance;
- granting the right of a “deliberative vote” to local non-governmental organizations thereby allowing them to express their opinion, to submit reporting notices for consideration, and to make proposals for decisions at the sessions;
- creation of Civil Consultative Councils, with participation of representatives of the public, which assist in execution of local policies in their capacity as consultants to the municipality;
- signing cooperation agreements between non-governmental organizations and local authorities—a unique experience for the country to establish a mechanism for discussing common problems through agreement for participation of non-governmental organizations in standing and temporary (ad hoc) commissions at the municipal council, holding regular meetings, and joint investigation of important municipal issues;
- organization of municipal forums as venues of public debate in the municipalities where all citizens of the municipality are invited to participate and make proposals for action.⁶¹

4.3.8 Media Awareness and Independence Rules

Along with citizens and non-governmental organizations, the media are the third important corrective of local authorities, helping to achieve better accountability, transparency, and legality of the work of the municipal bodies. Through the participation of the media in local democracy, civil control over the performance of local authorities is put into practice. Also, through their own independent investigations, the media have the opportunity to alert the public and the controlling bodies about instances of corruption, abuse, violations, etc.

According to the legislation, one of the mechanisms for accountability of the municipal authorities to the public is precisely the publishing of the decisions that have

been taken and the acts that have been adopted in the public media (art. 22, para. 1, LSGLAA). Thus, public awareness is achieved through the media.

In recent years, the attention of the media in Bulgaria has been particularly strongly focused on the problem of corruption in local and central authorities as the media undertook their own investigations on reported instances of abuse of power. According to the Penal Code (1968) it is quite easy to charge and convict a journalist: if a journalist attributes a crime or discloses some other defaming circumstance about another person in the media, he/she could be convicted. In foreign legislation, such an action is deemed a civil violation and is punished in accordance with the civil law and not the criminal law.

4.4 Institutional Control Measures

In Bulgaria, there are no special institutions in local government exercising control in conflict of interest situations, such as ethics committees, independent local officers or the like. Nor are there offices where local administrative officers can report on conflicts of interest or bring issues regarding cases when a person is not certain whether he/she is in a conflict of interest situation. If in some municipalities such ethic committees are created, they are isolated instances and not part of a general practice. The legislation in itself does not require the local authorities to create such units in their administrative structures.

The established Public Administrative Commission at the Council of Ministers, which monitors the overall performance of civil servants at the central and local administrative bodies, may be defined as a specialized controlling organ of the civil servants' conduct. Nevertheless, it monitors how civil servants fulfill their obligations at all public administration structures, not at any local administration in particular.

At this stage, prevention of conflict of interest in a local administration is done by various public bodies and institutions that monitor the authorities' work in one form or another. These controlling institutions are supposed to ensure objectivity in the governance of local issues and prevent local officers from benefiting at the expense of the public interest. These bodies exercise internal or external control over the activities and decisions of local authorities. Table 2.3 shows the various institutions and organs exercising control over the work of local authorities.

Table 2.3
Institutions with Control over Local Governments Regarding Conflict of Interest Prevention

Controlling Bodies and Institutions	Subject of control and the way it is exercised
1. Municipal council (over the mayor of a municipality)	<ul style="list-style-type: none"> repeals mayor's acts issued in violation of decisions of the municipal council (art. 45, para. 1, LSLAA);
2. Mayor of the municipality (over the municipal council)	<ul style="list-style-type: none"> imposes veto upon decisions of the municipal council (postponing the enforcement of a decision), which he/she believes is in conflict with the interests of the municipality or is against the law (art. 45, para. 2, LSLAA); challenges the legality of the municipal council's decisions before the court if the municipal council confirms it;
3. Regional governor	<ul style="list-style-type: none"> stops the application of illegal acts of the municipal council and takes them to the respective regional court (art. 32, PAA); repeals unlawful acts of the municipal mayors (art. 32, PAA);
4. Public Administrative Commission at the Council of Ministers	<ul style="list-style-type: none"> exercises overall control over civil servants in central and local authorities; monitors the fulfillment of obligations by civil servants; observes the legitimate holding of job competitions and provides methodological instructions on the latter; maintains the Civil Servant's Register; issues mandatory prescriptions to the respective body for repair of the violations if such have been registered;
5. Chief Labor Inspectorate Executive Agency at the Ministry of Labor and Social Policy	<ul style="list-style-type: none"> carries out overall control over labor—exercises overall control on the monitoring of labor legislation in all economic, social and government branches and activities; gives mandatory prescriptions and terminates the execution of illegal decisions or orders of the employers and officers in cases of violation of the labor legislation;
6. Specialized bodies for controlling compliance with labor legislation within the local government authorities	<ul style="list-style-type: none"> exercise internal control on compliance with the labor legislation; give mandatory prescriptions and terminates the execution of officers' illegal decisions or orders in violation of the labor legislation;

Table 2.3 (continued)

Institutions with Control over Local Governments Regarding Conflict of Interest Prevention

7. Courts	<ul style="list-style-type: none"> the acts of the municipal councils and mayors are subject to appeal before the respective regional court, which reviews their legitimacy (art. 36, APA);
8. National Audit Office (the national audit organ of Bulgaria)	<ul style="list-style-type: none"> performs independent external audit (assessment of the financial management) of public funds, including the municipal budgets and amounts spent by the municipalities coming from funds and programs of the European Union (CAA); submits an audit report to the National Assembly and informs the public by making public the spending of public funds; when violations are registered, it recommends measures for ceasing illegal action; sends the audit materials and reports to the respective competent authority for the establishment of civil, administrative or criminal liability;
9. State internal financial control bodies	<ul style="list-style-type: none"> prior to a decision for assuming financial responsibility or making an expenditure; or, internal audit by a delegated internal auditor from the Agency for State Internal Financial Control, which examines the audited structure and prepares a report with recommendations;
10. Ombudsman (public mediator)	<ul style="list-style-type: none"> institution, independent from the local and central executive authorities, which defends the rights and legal interests of the citizens from illegitimate actions of the public administration; acts against bad administration, power abuse, corruption and misdemeanor; (in Bulgaria the institution exists in only four municipalities: Sapareva Banya, Sevlievo, Koprivshitsa and Sofia—Mladost area; the adoption of the ombudsman act is forthcoming);
11. Specialized agencies to combat corruption	<ul style="list-style-type: none"> carry out investigation in cases of corruption; Those are: <ul style="list-style-type: none"> Bureau for Financial Investigation Agency at the Ministry of Finance; Economic Police, a specialized unit at the National Police Service.

4.5 Accountability and Responsibility for Generating Conflict of Interest

4.5.1 Legal Liability

Bulgarian legislation stipulates various types of legal liabilities applicable to cases of violation of the regulations related to conflicts of interest in local government. As was mentioned earlier in section 2.3 of the report, codified legislation concerning conflicts of interest in Bulgaria does not exist. This naturally presupposes disparate provisions on the liabilities borne by the local officer for the respective breaches.

The type of legal liability designed to be borne by local officers depends on the nature of the violation. According to Bulgarian legislation, the liability may be civil, criminal, administrative, and/or disciplinary (the last one concerning the civil servants and employees at the local administration only). The application of these liabilities constitutes an important corrective to the unlawful behavior of local officers. On the one hand, a penalty is imposed on the officer in order to punish him/her for wrongdoing (penalizing function) and, on the other hand, the imposed penalty serves as a warning for the penalized officer and for all office holders in the municipality (monitoring function).

Civil liability for damages exists because local officials are liable to compensate the state, municipal, or civil organizations for damages intentionally caused as a consequence of unlawful action or lack of action. Liability for damages may be applied both to municipal councilors and mayors and to municipal civil servants and employees. Rules in this respect are contained within the State Internal Financial Control Act, which applies to established unlawful offences in the course of conducting an audit of municipal financial management. The CSA further provides rules for public and civil damages caused by the municipal civil servants, as does the LC—for damages caused to the employer by employees under labor contract.

Administrative liability is a type of liability imposed on municipal public officials when they commit an offence in the course of exercising their official duties, if the offence is not considered a crime by law. It is applied to municipal mayors, municipal councilors and municipal civil servants and employees under labor contract. A fine is levied for the offence. Separate laws contain a good deal of such regulations: with regards to committing unlawful acts in privatization deals by the officials (PPPCA); with regards to non-provision of public information by the obliged bodies (APIA); with regards to bypassing the law, or circumventing a public procurement procedure (PPA); with regards to unlawful refusal to deliver administrative services (ASPJPA); with regards to violating a normative act, laying down provisions on the budget, financial and economic and accounting activities (State Internal Financial Control Act (SIFCA)).

Criminal liability applies to crimes that are committed by municipal public officials and are considered the most serious and publicly dangerous acts. The Penal Code of the Republic of Bulgaria stipulates a number of acts related to power abuse and unlawful gains derived from public service that are treated as crimes, such as bribe (art. 301 and the following articles), blackmail (art. 214), abuse of official position (art. 282 and the following articles), intentional contracting of a disadvantageous deal, illegal disclosure of official secrets, money laundering, etc. (art. 220 and the following articles).

Disciplinary liability is applicable to civil servants and employees under labor contract in the central and local administrations, if they have intentionally violated rules in their official duties. Civil servants are penalized according to the CSA (through reprimand, censure, postponement of promotion for up to one year, demotion from six months to one year, or dismissal). Pursuant to the provisions in force of CSCC, civil servants do not bear responsibility, and there are no stipulated penalties for violation of its rules. No disciplinary sanctions are provided for violating CSCC. Sanctions are imposed on employees as stipulated in the LC (reprimand, warning, dismissal) for breaking office discipline.

4.5.2 Political and Professional Responsibility, Public Accountability

Apart from legal liability, there exist some other types of public responsibilities, like political and professional responsibilities, which may also play a corrective role for unlawful actions or lack of actions by local public officers. According to Bulgarian legislation, however, political parties are not vested with the legal power to influence the termination of the powers of any authorities. Political parties cannot withdraw mayors and municipal councilors who are their parties' members from public positions. All the parties can do is to take away the political confidence from a given person, sanction them for deviating from the party line, or expel them from the organization, but a party cannot deprive an official of their mandate. The situation is similar with the professional association of municipal officers, because their status can be regulated by law only, and not by the professional unions' norms. According to current legislation, if a municipal officer is expelled from a professional association, this will not lead to his/her dismissal from the occupied administrative position. Such regulations exist only for specific occupations, such as doctors, dentists, etc.

As far as the public accountability of the municipal officers to the public is concerned, public trust in municipal officers can mostly be expressed in elections. Voting for a candidate is the expression of voters' confidence that the person in question will represent their interests, and vice versa. Secondly, the citizens also exercise continuous public control over the work of the elected local authorities and the local administration (this matter was discussed in greater detail in 4.3.6 and 4.3.7 of the report).

4.6 Extralegal Instruments for Conflict of Interest Prevention

4.6.1 Codes of Ethics and Internal Regulations

Since legal acts do not make a provision for matters of ethics by not creating effective instruments for certain moral issues concerning the prevention of conflict of interest, codes of ethics are being developed. They can effectively determine various requirements for objectivity and lack of prejudice in decision-making and regulate issues like acceptance of gifts, favoritism, sponsored trips, rules of conduct after leaving office, etc. Codes are a good instrument that trains and facilitates administrative officers in recognizing conflicting situations. There is a common practice in European countries of adopting such codes for members of parliament, ministers, civil servants, local governments, and even private organizations.

The use of codes of ethics (or codes of conduct) for local authorities, to define internal rules for conflict of interest prevention, is not common practice in Bulgaria. Furthermore, the legislation does not oblige municipalities to adopt such codes for public officials in local institutions. If, nevertheless, some have been adopted by certain municipalities, they remain isolated instances. There are municipalities that adopt individual rules for conflict of interest prevention in their statutes, but again these are individual cases.

The Civil Servants' Code of Conduct (CSCC) adopted in 2000 outlines the ethical norms of conduct in the performance of civil service. The Code is applied equally to civil servants of the central and local administrations and provides for certain conflict of interest rules. The major goal of the regulations is to strengthen public confidence in public administrations and officials, and to enhance the behaviorist culture of the latter in exercising their duties. In this connection, the code outlines ethical rules of conduct both for interaction between the civil servants and the public, and for their internal relationships in office. The code elaborates on the major principles and standards established by the CSA.

From a legal point of view, the code is of a more recommendatory character and contains no sanctions. For the code's creation, the positivist approach has been applied. This approach uses moral and ethical norms of conduct with a primarily guiding and instructional function. This approach corresponds to the idea of preventative measures (measures in advance) but, due to its recommendatory character and the lack of sanctions, it has no legal force. Because of the ethical nature of the norms, and the need to ensure their more effective implementation, it is necessary that sanctions for illegal behavior be provided.

The provisions of the code deal with the basic types of interaction between civil servants and the public, their professional conduct and work attitude, relationships between officers and executives, their dealings with information, and their personal

behavior. Most of the requirements, however, have been laid down in the form of general principals. There are no guidelines for conduct in concrete situations, conflict of interest situations included.

A Code of Ethics for municipal councilors has been drafted by experts of non-governmental organizations.⁶² The draft is to be implemented in several municipalities as a pilot project, and at this stage it will probably be evaluated as a good document, regulating conflict of interest issues that municipal councilors are likely to encounter. It also establishes sanctions for violation of the provisions.

4.6.2 Education and Training

Training municipal officers in standards on ethical and lawful professional conduct for typical situations and rules for acting in conflict of interest cases represents a good extra-legal tool for enhancing the efficiency of conflict of interest norms.

In Bulgaria, a special state body for training public servants in the central and local administrations was established: the Institute for Public Administration and European Integration at the Ministry of Public Administration.⁶³ The main focus of the institute is to raise the professional qualification of public officials by developing annual training curricula and holding courses and seminars for them.

The Institute for Public Administration and European Integration plays a leading role in the implementation of the National Strategy for Training of Administrative Personnel adopted by the Council of Ministers on February 7, 2002. The strategy has set the priority areas of training and seeks to raise the professionalism of the administrative staff and strengthen the administrative capacity of the country to prepare for future membership of the Republic of Bulgaria in the European Union. The strategy is based on the need to realize of a holistic integrated policy for management and development of human resources in the administration. The training measures are mostly directed at civil servants, but measures have also been established for all of the administrative personnel working under civil or labor contract.

However, there is no specialized organization for training local elected officials (i.e., mayors and municipal councilors). This type of training is mostly done by non-governmental organizations. Various initiatives exist for training mayors and municipal councilors, mainly owing to the National Association of Municipalities in the Republic of Bulgaria, established in 1996. All the municipalities in the country are members of the association. The National Association of Municipalities organizes a national system for training and qualification of municipal councilors, mayors and municipal administrative personnel.

Non-governmental organizations working in the field of local self-governance are also active in this respect. These include the Foundation for Reform in Local

Government, the National Association Legal Initiative for Local Government, etc. These organizations are carrying out the Innovation Practices in Bulgaria project, through which municipalities are exchanging their experiences of successful practices for improvement and development of local self-governance. The local authorities get access to information, printed and electronic, about the innovative achievements of their colleagues in the fields of servicing the citizens, training staff, cooperation and joint decision-making with the civil organizations, etc.

So far, the courses dedicated to ethics of conduct and conflict of interest prevention have not been a separate module but were presented an element of the programs for increasing the legal knowledge and skills of the local administration. A more effective use of this instrument would substantially enhance the efficiency of the application of legislation in this respect.

4.6.3 Human Resource Management Measures

Human resource management is an activity that has not been developed at the necessary level and with sufficient intensity by state and municipal authorities in Bulgaria. Yet in recent years it has been regarded in a more serious way. As a result, special provisions were included in the Civil Servant Act for promoting civil servants based on professional experience, acquisition of a rank and promotion in rank at certain time intervals, and rules for granting financial and moral incentives for good work performance. In addition, the Ordinance on the Conditions and Order of Attestation of the Servants in the State Administration was adopted. This ordinance should assist the fair and transparent career and professional development of those employed in public administration.

As far as financial incentives for the staff of the local bodies are concerned, it should be pointed out that the municipalities are quite restricted in applying them, though this appears to be one of the major motivational mechanisms for fair and lawful office performance. Salaries of municipal employees and mayors are determined by the central government—within the normative framework on salaries in budget organizations, laid down by the Council of Ministers.

Some municipalities are trying to use moral incentives for their staff, in the form of various encouragements for high quality work and recognition of employee efforts. Some motivational techniques being used include providing training courses for which a formal certificates are issued, awarding letters of gratitude, greeting and recognition papers for participation of municipal servants in competitions, exhibitions, etc.⁶⁴ Those, however, are not widespread practices but rather interesting decisions of separate municipalities.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary of the Identified Problems, Evaluation, and Conclusion

Currently, we can conclude that efforts have been made toward legal regulation of conflict of interest in Bulgaria and that these efforts aim for the development of minimal standards of prevention. Due to the horizontal approach of Bulgarian legislation, conflict of interest provisions may be found in different legislative acts, depending on the sphere of the public relationship being regulated. The separate acts stipulate different prohibitions and restrictions, intended to prevent the use of official position for personal gain, or to create conditions for bias in the activities of public officers.

Nevertheless, legislation has not defined all the potential areas of conflict. Some problems that are provided for in other European countries are either not regulated in Bulgaria, or the legislation is too laconic. More detailed regulation on conflict of interest exists mainly for civil servants. With regard to mayors, municipal councilors, and employees under labor contract in municipalities, regulation is insufficient. Besides, the norms on conflict of interest prevention are not systematically grouped into divisions or separate parts of the acts but instead dispersed throughout the text. Also, there are legal gaps concerning some procedural regulations in areas of a strong public interest (e.g., granting concessions or awarding municipal property).

The most essential problem areas, identified in the course of this research, are:

- With regard to substantive law:
 - 1) Difficulties for municipal officials in determining the opportunities for, and presence of, conflict of interest. This problem is predetermined by the lack of legal definition of the concept of “conflict of interest” in Bulgarian legislation. Various acts contain partial lists of cases where such conflicts might emerge. This makes it difficult for municipal officials to easily recognize the situations in which conflicts of interest arise. What is more, the scattered regulation in a number of acts hampers the administrators’ knowledge of the entire situation.
 - 2) Lack of clearly defined provisions on economic conflicts of interest, such as receiving gifts, sponsored trips, participation in nonprofit organizations, and restrictions on ex-officials who have left their position.
 - 3) There is no detailed regulation on the problem of favoritism and thorough prevention rules regarding municipal mayors.
 - 4) There is a problem with the application of conflict of interest norms in small municipalities with a limited population. The latter is especially true

for the ban on recruiting persons with family relations in one and the same municipal administration, as well as rules for withdrawal from the decision-making process.

- With regard to procedural regulation:
 - 1) Lack of requirements for conflict of interest declaration. Municipal councilors or mayors are not required to declare or disclose personal interests and conflicting situations upon taking office, annually, or in concrete situations of conflict. There is only a requirement that municipal civil servants declare their property status, and that includes real estate only.
 - 2) Insufficient regulation on withdrawal from decision-making in the presence of personal interests. There is no thorough and well-developed regulation on exclusion from decision-making, valid for all local bodies or managing administrative officers in the municipal administration, when concerned officials have some individual or corporate interests, family or relatives' interests in a decision in question. No detailed procedures are provided for removal of an official from decision-making on the request of the interested parties or for self-withdrawal from the process.
 - 3) There are no common legal rules ensuring objectivity, transparency and prevention of conflicts of interest in tender and competition procedures for awarding municipal property or granting local concessions. Those issues, as well as the entire procedure for awarding municipal property or granting local concessions, are left to the competences of each separate municipality. Many municipalities have adopted no such ordinances.
 - 4) A widespread practice in Bulgarian municipalities is the violation of tender and competition procedures for awarding municipal property, local public procurement, granting local concessions, or privatization deals.
 - 5) There is no procedural mechanism for control, training and consideration of the issues related to conflict of interest in local government, nor is there a body to which such issues can be addressed.
- With regard to publicity and public control:
The municipalities are still not using effectively the opportunities to include civil and non-governmental organizations in decision- and policy-making processes of local importance.
- With regard to the ethical standards and codes of ethics:
Codes of ethics are rarely used in municipalities. The use of codes of conduct or ethical codes by local authorities is not a widespread practice in Bulgaria. There is also no legal obligation for municipalities to adopt such codes. A code of conduct is only available for civil servants working for the national and local authorities.

The outlined problems lead us to the conclusion that the Bulgarian legislation is not taking full advantage of the techniques for conflict of interest prevention. These techniques can help guarantee the objective and unprejudiced execution of local public duties and restrict power abuses and corrupt practices.

5.2 Policy Proposals

The described problems make it necessary to improve the regulatory framework and draft better rules to prevent conflicts of interest in Bulgarian legislation and administrations. In particular, the application of effective and transparent mechanisms for public control over local self-governments will create prerequisites for consolidating stability and public confidence in local institutions, and, consequently, assist in the successful implementation of reforms in local government. Meanwhile, efforts to introduce modern standards of transparency and public accountability in the public sector represent an important catalyst for the country's accession to the European Union.

The development of local self-governance and strengthening of local democracy are among the government's priorities. It is established that a second level of local government will be created, the administrative capacity of local administration will be strengthened, and civil participation in the processes of development and government of the local communities will be enhanced. Furthermore, with the National Strategy to Combat Against Corruption of 2001, the government has planned a series of measures and mechanisms for combating corruption in local authorities, through the establishment of rules for increasing public accountability and transparency of the performance of the municipal authorities, development of control over the decisions by the municipal councils, and increased public control.

In order to enhance guarantees of objectivity in official's performance of public duties and limit opportunities for abuse of office, a set of measures for improving the legislative framework and implementation practices may be proposed. These measures are mostly directed at the local government, in view of the specific focus of this study, but they could serve as a model for prevention in the central government bodies as well. Such rules are equally needed for both the local government bodies and the central government authorities, since the problem of conflict of interest is underdeveloped at both levels of state governance.

Putting such measures into practice would significantly assist the government in its combat against corruption in state governance at all levels, and in building an effectively functioning local government in the country.

Table 2.4
Proposals for Changes

Proposals	Description
1. Development of legal definition on conflicts of interest	Develop and adopt a legal definition on conflict of interests. Differentiate between financial (pecuniary) and non-financial (non-pecuniary) interests by taking into account that both financial and non-financial interests should be subject to disclosure and declaration.
2. Systematization of duplication of power rules	Systematize the duplication of power rules with regard to the municipal councilors and municipal mayors by enumerating exhaustively all incompatibility cases for occupying public positions. Provide rules for action to be taken when such duplication appears, i.e., which one of the two positions is to be relinquished in such cases.
3. Stipulation of a detailed procedure for withdrawal from the decision-making process	Establish the legislative order and cases for withdrawal from decision-making for municipal councilors, mayors, and municipal officers in managerial positions, when they have personal, family, or corporate interest in the issues to be decided. Develop detailed procedures for self-withdrawal and opportunities for removal on request of other interested parties in the decision-making process (the public included).
4. Provision of an obligation for municipal councilors and mayors for declaration of interests and property	Provide for an obligation of municipal councilors and municipality mayors to disclose (declare) personal or corporate interests as well as family interests. This could be done by means of adding municipal councilors and municipal mayors to the persons liable under the PPPSPPA.

Table 2.4 (continued)
Proposals for Changes

<p>5. Introduction of changes in the rules for declaration in the Register under the Publicity of the Property of Persons in Senior Public Positions Act</p>	<p>Together with the inclusion of municipal councilors and mayors as liable persons, the Register under PPPSPPA should provide for:</p> <ul style="list-style-type: none"> • declaring the occupied management positions (manager, member of board of directors, executive or supervisory council, etc.) in organizations where high-positioned officials, such as municipal councilors, are allowed to occupy such positions by law; • declaring membership in various non-profit organizations and unions; • informing of changes in the circumstances declared in the Register within a set term (i.e., 30 days of term) of the occurrence of the change; • direct rather than mediated (through the media or public bodies) access of citizens to data in the Register, with the exception of access to data on family members — a stipulation made in order to respect the right to privacy of such persons; • sanctions (fines) against liable persons who fail to submit a declaration within the deadline, in view of the currently low discipline in this respect.
<p>6. Enlarging the scope of public relations and property declared by local administration employees</p>	<p>Stipulate an obligation for civil servants and employees under labor contract in local administration to submit a declaration on real estate, possessions over a defined value, payments and presents received with relation to public service that exceed a certain amount, and membership in managing and controlling bodies of commercial and non-profit organizations.</p>
<p>7. Provisions for restrictions after an official leaves a post or position</p>	<p>Develop provisions banning, for at least two years after an official leaves office, the performance of activities in organizations with which the person has had direct and considerable official relations during the year preceding termination of office.</p> <p>Define which official relations shall be deemed direct and considerable.</p> <p>Provide for a ban on using official (confidential) information for personal gain after leaving office.</p> <p>These provisions may be included in the codes of conduct for municipal councilors, mayors, and local government employees.</p>
<p>8. Adoption of minimum standards for tenders and competitions for awarding municipal property and granting local concessions</p>	<p>Provide for minimum standards in the MPA regarding conflict of interest prevention in holding tenders and competitions for awarding municipal property and granting local concessions.</p> <p>The minimum standards should be mandatory for municipalities when adopting local ordinances regulating such matters, and they should also guarantee transparency if no such ordinances exist.</p>

9. Development of detailed methodological guidelines for the implementation of the PPA provisions	Develop and adopt detailed methodological guidelines for implementation of the PPA and the ordinance for small public procurement under the act. The guidelines should make use of and include the implementation practices for the Public Procurement Act, different cases related to the awarding and execution of public procurement, and judicial practices.
10. Introduction of legal obligations for municipalities to adopt codes of ethics	Introduce an obligation for the mandatory adoption of codes of conduct by each municipality, for municipal councilors and mayors. The legislation should establish minimum norms and standards that need to be incorporated within the codes, as well as sanctions for violations.
11. Addition to the Civil Servants' Code of Conduct	Supplement the CSCC with matters such as receiving gifts, sponsoring trips and education, and bans on certain activities for a set period of time after someone leaves their position. Provide for sanctions for violating the provisions of the Code.
12. Establishing a specialized body on ethical issues in local government	Establish a Commission on ethics at respective municipal councils as a standing or interim commission. The Commission should monitor the overall observation of the norms of conduct by municipal officers, investigate the conduct of local bodies, receive appeals and reports on conflict of interest situations in local government. It should tackle issues concerning emerging conflicts, those of removal on request of other interested parties, as well as cases of self-withdrawal from office; it should propose to the municipal council the imposition of relevant sanctions for violations of the codes of conduct. The Commission should provide instructions and guidance in conflict situations and in cases when a person is uncertain whether he/she is in a conflict situation, as well as other matters regarding the observation of ethical standards.
13. Provision of special procedures for examination of conflicts of interest situations by the State Administrative Commission	Provide special procedures for examination of conflict of interest cases related to civil servants in the statute of the State Administrative Commission.

Table 2.5
Recommendations Related to Practices upon Implementation
of Norms for Conflicts of Interest

Proposals	Description
1. Training for local officials on conflicts of interest	Undertake training of local officials on issues related to conflicts of interest, based both on the currently existing normative regulation on conflicts of interest and on the future adoption of respective legislative amendments within the provision of conflicts of interest. The training should be assigned after publishing a tender for public procurement.
2. Development of a database and information pools on conflict of interest issues	Establish a database and information pools clarifying the normative basis for conflicts of interest, describing the relevant obligations, providing example cases and instructions for proper action in conflict situations, and giving guidance on the particular authority that the official should address. The database should be at the continuous disposal of the municipal bodies and their employees. Assign the establishment of the information base through a public procurement procedure.
3. A survey on the status of applying norms on preventing conflicts of interest in small municipalities	Conduct a survey of the status, constraints, and difficulties in the implementation of provisions for the prevention of conflict in Bulgarian small municipalities bearing in mind the possibilities for more frequent conflict appearance in small communities, due to their small population. Study the opportunities and necessary legislative changes regarding small municipalities related to the more efficient implementation of conflict prevention rules in their area.
4. Development of mechanisms for civil participation in the local decision-making process	Develop mechanisms for civil participation in the work and decision-making of the municipal council, such as: <ul style="list-style-type: none"> • granting the right to citizens to have representation at municipal council sessions through local non-governmental organizations and providing these organizations with a right to advisory vote; or • establishing civil consultative councils with representatives of the municipality, citizens, and non-governmental organizations for discussion of local issues and proposal of solutions; or • concluding cooperation agreements between nonprofit organizations and local authorities for joint discussions of common problems. Introduce an obligation for municipalities to inform the public in advance of the agenda of municipal council meetings through appropriate methods, which will facilitate the participation of citizens and organizations in the process of discussing and resolving matters of local importance.

ACRONYMS

APA	Administrative Procedure Act
APIA	Access to Public Information Act
ASPJPA	Administrative Service to Physical and Juridical Persons Act
ATCRBA	Administrative Territorial Constitution of the Republic of Bulgaria Act
CSA	Civil Servants Act
CSCC	Civil Servants' Code of Conduct
JSA	Judicial System Act
LC	Labor Code
LEA	Local Elections Act
LSLAA	Local Self-Governance and Local Administration Act
MBA	Municipal Budgets Act
MPA	Municipal Property Act
NAMRB	National Association of Municipalities in the Republic of Bulgaria
NAOA	National Audit Office Act
PAA	Public Administration Act
PC	Penal Code
PPA	Public Procurement Act
PPPCA	Privatization and Post-Privatization Control Act
PPPSPPA	Publicity of the Property of Persons in Senior Public Positions Act
SIFCA	State Internal Financial Control Act

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NOTES

- ¹ May 1997–July 2001—Government with Prime-Minister Ivan Kostov, leader of the United Democratic Forces Coalition—the party, that won the parliamentary elections in 1997; since July 2001—Government with Prime-Minister Simeon Saxe-Coburg Gotha, formed by the National Movement Simeon II—coalition between the Movement for National Revival Oborishte and the Party of Bulgarian Women.
- ² According to data of the national representative survey of the National Center for the Study of Public Opinion at the National Assembly, conducted in September 2002.
- ³ For further information on the electoral activity of Bulgarian citizens—Bulletins of the Central Election Commission on the results of the presidential elections, held on July 17, 2001; on November 11, 2001 (round I) the activity is 50.5 percent, on November 18, 2001 (round II)—54 percent, and at the partial local elections in the municipalities of Sliven (13 percent), Ruse (24 percent), Blagoevgrad (25 percent), etc.
- ⁴ According to a public opinion poll held in May 2002 by Coalition 2000, corruption is among the gravest problems in Bulgaria, preceded by the problems of unemployment, low income, and poverty only.
- ⁵ The surveys show that, in the CEE countries, the lack of confidence in national institutions is largely due to the public understanding that there exists widespread corruption. The majority of the citizens in Poland, Romania, and Slovakia, and half of the citizens in Bulgaria and Hungary, think that corruption is most widespread in state institutions and state administration—*On the Take: Central and East European Attitudes Toward Corruption*, October 1999—USIA report, United States Department of State.
- ⁶ Corruption indices of Coalition 2000, May 2002, op.cit.

- ⁷ In Support of the statements, the highlighted problems of public administration are described in the report *Corruption in Transition: the Bulgarian Experience*, a Report by the Bulgarian Working Group for the Partners in Transition II Conference, 2001, and also the problems of the work of the administration in the delivery of public services in *Service Standards Improvements Project Report*, World Bank, 2002, pp.133, 274.
- ⁸ Adopted with Decision No. 36 of the Council of Ministers of 1998.
- ⁹ Established with decision No. P-100 from December 29, 2000 of the minister of public administration.
- ¹⁰ Regulation Nos. 152 and 259 of the Council of Ministers of 2000.
- ¹¹ Adopted with Decision No. 671 of the Council of Ministers of 2001.
- ¹² During the last transition years, there may be observed an improvement in the corruption rating of the Republic of Bulgaria within the framework of the comparative index of the international non-government organization Transparency International: In 1998 it was ranked 66th (as for 1999 it had the lowest rating), in 2001 it took 49th place, and along this line it came closer to the Central European countries.
- ¹³ Government Strategy for Modernization of the State Administration—from accession to integration, adopted with Decision of the Council of Ministers No. 465 of 2002.
- ¹⁴ Prom., SG, No. 56 of 1991.
- ¹⁵ There were adopted the Local Self-governance and Local Administration Act (LSGLAA, 1991), Referenda Act (RA, 1996), Local Elections Act (LEA, 1995), Local Fees and Taxes Act (LFTA, 1997), Municipal Budgets Act (MBA, 1998), and Municipal Property Act (MPA, 1996).
- ¹⁶ Ratified with an Act, prom. SG, No. 28 of 1995, issued by the Ministry of Regional Development and Public Works, prom., SG, No. 46 of 2000.
- ¹⁷ Prom., SG, No. 130 of 1998, last amended and added SG, No. 99 of 2001.
- ¹⁸ Prom., SG, No. 67 of 1999, last amended and added SG, No. 110 of 2001.
- ¹⁹ Prom. SG, No. 63 of 1995, last amended—SG, No. 57 of 2000.
- ²⁰ Art. 142 of the Constitution of the Republic of Bulgaria.
- ²¹ The order of electing a municipality mayor is established by law, i.e., the Local Elections Act, prom. SG, No. 66 of 1995, last amended—SG, No. 24 of 2001.
- ²² The mayor of an area or mayoralty carries out specific activities related to the governance of the area or mayoralty, entrusted to him by law, or by the regulations on the activities of the municipality. For example, he allocates the municipal budget; he is responsible for the economic entities as established by the municipal council; he appoints and discharges public servants who assist him in his activities in the municipal administration; he ensures the implementation of the administrative services, etc.
- ²³ In the present study, the mayors of mayoralties and areas are not considered separately, since the regulations referring to prevention of conflict of interest do not differ from the regulations on mayors of municipalities.
- ²⁴ Their position is regulated by: Public Administration Act (PAA, 1998), Civil Servants Act (CSA, 1999), Administrative Service to Physical and Juridical Persons Act (ASPJPA, 2000), Access to Public Information Act (APIA, 2000), Public Procurement Act (PPA, 1999), Local Self-Governance and Local Administration Act (LSGLAA, 1991), Local Elections Act (LEA, 1995), Municipal Property Act (MPA 1996), Privatization and Post-Privatization Control Act (PPPCA, 2002), Labor Code (LC,

- 1986) Penal Code (PC, 1986), State Internal Financial Control Act (SIFCA, 2000), National Audit Office Act (NAOA, 2001), and Publicity of the Property of Persons on Senior Public Positions Act (PPSPPA, 2000).
- ²⁵ Adopted with Regulation No. 35 of CoM of 2000.
- ²⁶ The Constitution of the Republic of Bulgaria (1991), which lays down fundamental principles related to conflicts of interest such as rule of law, openness and transparency of public governance, equality before the law, political neutrality of the civil servants, etc.
- ²⁷ In which Bulgaria is a party—European Charter of Local Self-Governance (Strasbourg, October 15, 1985).
- ²⁸ Public Administration Act (PAA, 1998), Civil Servants Act (CSA, 1999), Administrative Service to Physical and Juridical Persons Act (ASPJPA, 2000), Access to Public Information Act (APIA, 2000), Public Procurement Act (PPA, 1999), Local Self-Governance and Local Administration Act (LSGLAA, 1991), Local Elections Act (LEA, 1995), Municipal Property Act (MPA, 1996), Privatization and Post-Privatization Control Act (PPPCA, 2002), Labor Code (LC, 1986) Penal Code (PC, 1986), State Internal Financial Control Act (SIFCA, 2000), National Audit Office Act (NAOA, 2001), and Publicity of the Property of Persons on Senior Public Positions Act (PPSPPA, 2000).
- ²⁹ Ordinance on public procurement procedure under the thresholds defined in art. 7, par. 1 of the Public Procurement Act (2000); Rules for application of the Municipal Property Act (1996), Ordinance on the conditions and order of attestation of civil servants in public administration (2002).
- ³⁰ Which refer to the organization and activities of the municipal councils and municipal administration; the acquisition, management, and disposal of municipal property; and the terms for holding tenders and competitions for granting a concession.
- ³¹ Civil Servant's Code of Conduct (CSCC, 2000).
- ³² For further information on defining conflict of interest see *Conflict of Interest: Legislators, Ministers and Public Officials*, by Gerard Carney, 1998, Transparency International—www.transparency.org; also, *Conflict of Interest at the Civil Service System: Essence, Ways of Appearance, Notices And Solutions*, P.M. Kudukin.
- ³³ Pursuant to the Constitution of the Republic of Bulgaria, the Constitutional Court is the body that provides mandatory interpretation of the constitutional provisions, and after the Court announces their decision on the interpretive resolution of a given issue, this decision shall be incorporated within the Constitution and shall become its part. Decision No. 18 of October 25, 2001 of the CC of Republic of Bulgaria under constitutional case No. 15/2001, promulgated in State Gazette, No. 94 of 2001.
- ³⁴ These provisions read in line with the provisions of the European Charter on Local Self-Governance (Strasbourg, 15.X.1985), pursuant to which the functions and activities that do not compete with the exercising of a local representative's mandate, may be defined only by the law.
- ³⁵ Prom., SG, No. 59 of 1994; last amendments and additions, No. 25 of 2001.
- ³⁶ Prom., SG, No. 26 1986; last amendments and additions—SG, No. 1 of 2002.
- ³⁷ See Table No. 1.
- ³⁸ *Conflict of Interest: Legislators, Ministers and Public Officials*, by Gerard Carney, 1998, Gerard Carney and Transparency International.

- ³⁹ The ban on conducting commercial activity does not include single purchases or other transactions, which do not represent core business activity and source of income for the person. If the opposite is true, this would mean that such persons will not be able to be elementary participants in commercial turnover. In this connection, Decision No. 5775 of SAC on administrative case No. 3116/99, Decision No. 5999 of November 15, 1999 of SAC on administrative case No. 3114/99.
- ⁴⁰ The legislation contains such regulations with regard to the judicial system bodies—judges, prosecutors and investigators (art. 132, para. 4, JSA, 1994).
- ⁴¹ Miller, William L., Grodeland, Ase B., and Koshechkina Tatyana Y. (1998). *Are the People Victims or Accomplices? The Use of Presents and Bribes to Influence Officials in Eastern Europe*, Budapest: Open Society Institute, Local Government and Public Service Reform Initiative.
- ⁴² Ibid.
- ⁴³ Regulations on the reception of gifts may be found with respect to members of parliament, who cannot receive presents within the size of more than one fifth of their basic annual remuneration, as gifts over this limit shall be given to the National Assembly (Rules for the Organization and Activities of the National Assembly, 2001).
- ⁴⁴ Gerard Carney and Transparency International (1998). *Conflict of Interest: Legislators, Ministers and Public Officials*.
- ⁴⁵ Ibid.
- ⁴⁶ Prom., SG, No. 28 of 2002.
- ⁴⁷ Prom., SG, No. 44 of 1996, last amendments and additions, No. 34 of 2001.
- ⁴⁸ Hristo Panayotov, Directorate of State Administration, the Council of Ministers, *Particularities, Role and Major Accents of the Civil Servant's Code of Conduct Adopted in Bulgaria*. <http://www.ipaei.government.bg/intpublications.phtml>.
- ⁴⁹ The National Audit Institution of the Republic of Bulgaria, March 10, 2001.
- ⁵⁰ These prescriptions cannot be applied to mayors and municipal councils since the manner of their election determines their status as political.
- ⁵¹ Gerard Carney (1998).
- ⁵² For further information on lobbying in Bulgaria see *How to Lobby II*, Second expanded edition, by Alexander Mihailov, Sofia 2000.
- ⁵³ The whole text of the bill can be found at the official website of the Bulgarian National Assembly, <http://www.parliament.bg>.
- ⁵⁴ This source of conflict of interest does not refer to mayors and municipal councilors, since they are elected by direct vote.
- ⁵⁵ Prom., SG, No. 54 of 2002.
- ⁵⁶ Prom., SG, No. 90 of 1979; last amendments, No. 45 of 2002.
- ⁵⁷ Gerard Carney (1998).
- ⁵⁸ Corruption Assessment Report (2001), Coalition 2000.
- ⁵⁹ See *The Ombudsman Institution—Concept and Bill for Bulgaria, Foreign Legislation* (2000). Sofia: Center for the Study of Democracy.
- ⁶⁰ More information related to the local civil initiatives can be found on the website of the Foundation for Local Government Reform, <http://www.flgr.bg>.

- ⁶² These organizations form a team for innovative practices in local government with the assistance of the Foundation for Local Government Reform and the Initiative Local Self-Government Program. The project was developed in 1999.
- ⁶³ The statute of the Institute for Public Administration and European Integration was adopted with a directive of the Council of Ministers No. 82 of May 15, 2000, publ. in OG 41 of May 19, 2000.
- ⁶⁴ See Innovative Practices in Bulgaria—Moral Incentives to Municipal Officers (the municipality of Svishtov) on the website of the Foundation for Local Government Reform at: <http://www.flgr.bg/innovations/browseBg.asp>.

The Progress of Regulation of Conflict of Interest in Local Government in Latvia

Maris Pukis

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1. INTRODUCTION

Conflict of interest used to be mainly regarded as the core problem associated with preventing corruption. Public officials should serve the public interest, but the temptation to act for one's private interest is very strong. Eliminating such opportunities by the introduction of adequate restrictions is the traditional way of ensuring proper conduct of public administration for society's benefit.

Corruption is the potential consequence of conflict of interest. It is a crucial issue for local democracy, because it threatens the rule of law and human rights; undermines good governance, fairness, and social justice; distorts competition; hinders economic development; and endangers the stability of democratic institutions and the moral foundations of society.

The Civil Law Convention on Corruption (Council of Europe, 1999) gives the definition of corruption as "requesting, offering, giving, or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof."

Successful public policy has to be based on the real, not imagined, qualities of public officials. Therefore, preventing conflict of interest situations is a substantial part of any anti-corruption program.

The national policy of preventing conflicts of interest fully influences local authorities. The scale of local governance can be substantially different from that of national governance, particularly in the case of small, rural municipalities. Therefore, it is necessary to describe not only common features, but also the effects of difference in scale.

In the case of small-scale authorities, each of the above-mentioned dilemmas is to be resolved in different ways from the national scale. Solution on the national level has tended to be stronger regulation, economic uniformization, which is suspect to

employees, and collective responsibility. Such an approach leads to bureaucratization and entails substantial expenditure.

The same is true for measures developed to prevent conflict of interest. In local governments of smaller scale, such measures appear more expensive. Therefore, solutions to prevent corruption that seem suitable on the national level could lead to a significant decrease of efficiency at the local level.

2. GENERAL CHARACTERISTICS OF THE SITUATION

2.1 The Characteristics of Self-Governments

There are two kinds of local governments in Latvia—regional and local. Local government is based on directly elected representatives in decision-making bodies; regional (district) councils consist of chairmen of directly elected local councils according to a 1998 law (from 1989 to 1997 district councils were directly elected).

As of October 1, 2002, the number of self-governments of different types was:

- seven major cities (with the competence of local and regional governments);
- 59 towns, 397 rural municipalities, *pagasts*, and nine municipalities, *novads*, merged by reform, (with the competence of local governments);
- 26 districts, *rajons*, (with the competence of regional governments).

There were 15 *novads* as of December 1, 2002; correspondingly the number of towns and *pagasts* are decreasing. The central government intends to decrease the number of local authorities to approximately 102 by the year 2006. Half the population lives in seven major cities, the rest under local governments.

Councils of local governments are elected in proportional elections. If the number of residents exceeds 5,000, candidates have to be nominated by political parties. If the number of residents is less than or equal to 5,000, candidates have to be elected by political parties or by lists of electors. Many of the rural municipalities have fewer than 1,000 residents, therefore the majority of elected local government officials are not delegated by political parties.

Chairmen of local governments are the highest officials of the locality, and they used to be called mayors. Mayors have to be elected by councils and are directly accountable to them. Mayors are chairpersons of councils and simultaneously head the local or regional government. They are entitled to represent the self-government in relations with any other public or private entities.

The head of the local government administration is the executive director. The executive director has to be appointed by the council. Candidates to that position can only

be nominated by the mayor. In a sense this is a political position, since it depends on a political majority. In some views, the executive director has to be a professional manager. The executive director of a local government is not a civil servant and may come from the private sector. In small municipalities (fewer than 5,000 residents) mayors can also carry out the responsibilities of the executive director.

2.2 Positions, Roles, and Functions of Local Government Officials

To explore real and potential situations of conflict of interest, it is necessary to describe the position, roles, and functions of local government officials and employees.

The order of elections, main requirements to participate in elections, and primary qualifications of councillors are determined by The City Council, District Council and Rural Municipality Council Election Law (1994-a), and by the Law On the Status of Councillors in City Councils, District Councils, and Rural Municipalities Councils (1994-c).

Councillors carry out their duties in their own free time. The job of chairman of council (mayor) must be full-time by law. The statute on local governments may determine some other positions, such as vice chairman, chairmen of councils, standing committees, etc., as full time, but it happens mainly in cities. As a rule, in rural municipalities, only the mayor works for the community full time. Councillors normally get paid for the time spent performing their duties, using rates established by the council.

The national association of self-governments (*ULRGL*—the Union of Local and Regional Governments of Latvia) opposed the idea of giving the legal status of state civil servants to self-government employees because there was a clear danger that this more might subordinate local or regional government executive bodies to central authorities. However, the first Law on State Civil Service (1995) determined the introduction of a unified system for both central and self-government civil servants. Implementation was postponed from year to year, taking into account the lack of financial resources for that purpose, until that stipulation was eliminated from the second State Civil Service Law (2000). This prevented a violation of the European Charter of Local Self Government. Nevertheless, legal acts about civil service during the last eight years have had substantial indirect influence on the performance of local or regional government employees and institutions.

Self-government employees are not civil servants. They work on contract with the self-government or its institution (the contract being signed by the mayor, executive director or head of a local or regional government institution). Uniform legislation of employer–employee relations in the private sector apply to local and regional government employees as well. Exceptions from those general rules, which lead to stricter requirements for self-governmental officials, are contained in special laws on preventing conflicts

of interest, detailing administrative processes, providing freedom of information, etc. Further requirements might also be included in the text of individual contracts.

Senior local or regional government officials and heads of self-governmental enterprises or establishments are employed by contract with the mayor. Other officials have contracts with the executive director or the head of enterprises owned by the self-government.

2.3 Recent History of Preventing and Combating Corruption in Latvia

Like in any democratic country, the problem of conflict of interest is under permanent discussion by civil society in Latvia. Attempts to reduce the influence of conflict of interest are a substantial part of combating corruption in general. That concerns all levels of public government, including local and regional governments.

A form of “wild capitalism” was initially a common stage of development in all transition countries. Among the characteristics of that period were the growth of illegal economic activities, the substantial influence of criminal elements, and the growing corruption of the bureaucracy. On the one hand, it was a continuation of the Soviet traditions, on the other hand these phenomena usually characterize any society that goes through revolutionary changes.

The environment was hospitable for these activities because previous legislation and institutions were questioned, but no new ones had yet been created. The system of control was also weakened during the first years after re-establishing independence.

The negative role of corruption as a source for slowing economic development became evident from the first steps of Latvia’s transition from a planned centralized economy to a market economy. First of all, it led to a decrease of income in public positions. Second, it led to unfair competition—creating opportunities for bribery.

Gradually, the role of corruption became more evident and dangerous. An increase in corruption meant a decrease in trust in democratic values, resulting in the loss of support by citizens for the democratic process at the national, regional, and local levels. The influence of corruption played a crucial role in election results: In many cases it gave rise to populist and undemocratic political parties.

In an effort to prevent corruption, attention was focused on conflict of interest as a source of potential corruption. The early laws on rural municipalities, and self-governments of districts and cities during the years 1990–1993 introduced legal statutes to prevent participation in the decision-making process when real or potential conflicts of interest were present, as well as restrictions to prevent duplication of power. Legal norms to ensure transparency of local and regional governments were also included.

During 1990–1993, efforts to prevent conflicts of interest in local or regional government did not lead to practical results—legislation norms were fragmentary and the institutional basis for implementation insufficient.

In 1994, a strong intention of combating corruption was declared. The period since has had two phases:

- introduction of anti-corruption legislation package (1994–1997);
- revision strategies, corresponding legislation and institutions (1997 until present).

The first stage is related to the process of public administration reform after re-establishing the legal and institutional system of pre-Second World War Latvia, including the Constitution (Satversme) (1922), Cabinet of Ministers Structure Law (1923) and Civil Law (1937), as well as the cabinet system of national governance. In the first stage, anti-corruption measures were nationally introduced through legislative acts:

- on dealing with public property (on privatisation (1994-b), on alienation of property (1995-b), on the prevention of squandering financial resources and property (1995-c) and procurement (1996)) including legal norms ensuring transparency, competition and economy;
- establishing restrictions preventing self-government officials (1994-c, 1994-d, 1994-e, 1995-e) from occupying positions with potential or real conflict of interest;
- introducing procedures and institutions to supervise the activity of officials and authorities (1994-d, 1995-a, 1995-d).

Special mention has to be made of the Prevention of Corruption Law (1995-e), which established a detailed system of measures to prevent conflicts of interest. This law applies to public officials and, in cases specified by this law, to their relatives and former public officials. Mayors, elected councillors, executive directors, senior self-government officials, heads of enterprises, establishments, and departments, and employees issuing administrative acts are subject to this law. All persons mentioned here were obliged to respect the restrictions and declare their assets.

The institution charged to handle the declarations was the State Revenue Service. In the final days of the year 2001, when this law was put in force, over 40,000 public officials registered to file declarations, one third of them self-government employees.

Declarations by public officials submitted to the State Revenue Service were accessible to the public. The information included in the declarations may not be qualified as confidential and should be available without restrictions. These provisions do not apply to information that, in accordance with this law, has been determined to be non-publishable.

According to the law, public access means the right of reporters of media organizations, as well as any other person, to gain access to declarations by any public official, and to report on them.

The second stage of anti-corruption policy was driven by two forces:

- wide criticism of the existing system, regarded by politicians, civil servants, and public officials as bureaucratic, ineffective, and discouraging better efficiency;
- influence of foreign advisors, particularly from the European Commission, to increase administrative capacity by strengthening anti-corruption measures.

In this period, the Corruption Prevention Council was formed as a coordinating institution by the Cabinet of Ministers on September 23, 1997. This new institution has developed a four-year governmental program for the prevention of corruption. The program is based on the awareness that corruption undermines the economic, social and legal development of the state, as well as the rights and freedoms of its citizens, thus reducing public trust and resulting in an adverse impact upon the political stability of the country. The Program has been developed with the objective of creating a long-term and efficient state policy to prevent corruption by identifying conditions inviting corruption and by providing legal and other mechanisms for the elimination of said conditions, including the development and implementation of new legislation.

The corruption prevention strategy took three basic directions at the time: prevention, fighting against corruption, and training. The three directions need to be made more effective by harmonizing efforts by the state sector, private sector, and the public, meeting Latvia's international commitments at the same time. The central objective of the strategy to prevent corruption should be the improvement of legislation and strengthening the institutional framework, along with increased public awareness and support for corruption prevention efforts.

The conclusion of program is that the primary conditions favoring corruption are:

- normative acts are not clearly and accurately formulated;
- the institutional system of public administration is in disarray;
- the system of financial reporting and accounting is incomplete;
- the public is poorly informed about the essence of corruption and causal relationships;
- the norms of ethics are neglected;
- remuneration of public employees is extremely low;
- the public is tolerant of corruption and potentially willing to participate in it.

Another important conclusion is that the prevention of corruption is hindered by:

- the conviction that conditions justify corruption;
- the disinclination of the public to report cases of corruption when no consequences are defined for punishment;

- the belief that a particular act is not a case of corruption;
- concern about revenge;
- concern about insufficient evidence.

As a result, even though significant efforts have been made in Latvia to prevent corruption, independent investigations showed that in many respects the situation is not satisfactory. Municipalities are regarded as potentially corrupt organizations.

The *Transparency International Corruption Perception Index* has given Latvia a score of 3.4 (where 0 means the most corrupt and 10 the least) since 1999, ranking it between 57th and 59th place—the worst position for any candidate country except Bulgaria and Romania. According to the same index, the situation has become a little better in 2002—Latvia scored 3.7, ranking it between 52nd and 56th place along with the Czech Republic and Slovakia and before Romania.¹

The EBRD/World Bank's 1999 *Business Environment and Enterprise Performance Survey* (BEEPS) indicated that Latvia was relatively unaffected by administrative corruption (1.4 percent of annual revenue spent on unofficial payments by companies compared to 2.2 percent of the regional average).

On the other hand, according to the BEEPS survey, Latvia suffered from a serious problem of “state capture,” with the highest “capture economy index” of any EU candidate country (30 compared to the candidate country average of 16). Forty percent of Latvian firms reported that their business was significantly or very significantly affected by buying parliamentary votes.²

These survey results indicate that firms perceive the legislative process to be easily influenced by corruption, more than in any other candidate country with the arguable exception of Bulgaria and Romania.

Media reports explain these results by the limited attention society pays to corruption. In countries where there is little public awareness of corrective actions against corrupt practices, public opinion polls show the “highest level” of corruption. There are countries where bribes are a common element of relations between citizens and public administrations. It seems strange that the *Transparency International Corruption Perception Index* places Latvia behind Belarus (36th place) and some other countries that are less democratic than Latvia.³

One of the main obstacles in combating corruption is lack of attention to the bureaucracy, including public administration reforms. As Jansone and Reinholde⁴ argued:

“from the point of view of society and NGOs, the Civil Service is perceived as an enormous and closed bureaucratic machine with a tendency for self-maximization and limited possibilities for cooperation. For politicians it is preferable to speak about combating bureaucracy as such, than about improving capacity of public administration.”

Corruption is a permanent topic in the media. Journalists do much reporting on real, as well as at times imagined, cases of conflict of interest. Therefore, the issue of corruption is high on the political agenda. Fighting against corruption was one of the major promises by the winners of parliamentary elections of October 5, 2002. After the elections, among its first steps, the new government dismissed many senior officials from state civil service and reduced the protection of public officials by amendments in legislation.

3. POTENTIAL SOURCES OF CONFLICT OF INTEREST

3.1 Over-regulation

The latest edition of the national corruption prevention program (Cabinet of Ministers, 2001) mentions that the fact that “normative acts are not clearly and accurately formulated” favors corruption. The first edition saw over-regulation as the source of conflict. The difference between the two editions shows a different approach to public administration reforms.

One approach is based on the Westminster tradition and corresponding reforms, characteristic for Commonwealth countries during the last decades of the 20th century. Jansone and Reinholde⁵ found:

“similarities between New Zealand and Latvia on such issues as the establishment of governmental or executive agencies, the first attempts to introduce the quality management system in public institutions and introduction of management contracts (regarding civil servants) and performance agreements (regarding institutions).”

That approach is connected to the idea of less regulation and more of a results orientation.

The other approach is based on the Roman–German tradition and attempts to restore the pre-Second World War situation, akin to the Weimar republic in Germany of the 1920s. Many Latvian public law theoreticians and politicians are inclined strongly towards the “traditional” bureaucracy that can be found in the new State Administration Structure Law (2002). According to that law, “state administration shall be organized in a single hierarchical system. No institution or administrative official may remain outside this system.” Such requirements also concern self-governments. That approach is connected to the idea of more precise regulation and prompting the administrations to comply with rules.

To analyze the influence of legislative acts on corruption, Klitgaard⁶ used this formula:

$$C = M + D - A$$

where C stands for corruption, M stands for monopoly of power, D for the discretion of public officials, and A for accountability.

Corruption tends to increase in situations where officials have a monopoly on power and discretion, but are not held accountable for their conduct.

The tendency to introduce more regulations leads to the necessity to establish corresponding executive and controlling institutions. At the national level, this can be reasonable, but in the case of local governments, it is not obvious that benefits will outweigh costs.

One of the principles limiting controlling actions has to be the application of proportionality. The scope of involving central supervision has to be comparable with the importance of interests being protected. If the cost to control corruption will decrease the efficiency of local government, then the introduction of more regulations is not useful.

There is one more aspect. Too much regulation leads to bureaucratization. That bureaucratization leads to an increase in the number of restrictions and to officials' issuing administrative acts. Each executive official has some authority to decide on administrative acts. The introduction of new executives can be a reason to employ new inspectors and supervisors. They also get their corresponding authority to make decisions. Additional authority always increases the potential of corruption. If the principle of proportionality is not taken into account, then expenses to ensure accountability at the local level could outweigh benefits.

One of the manifestations of over-regulation is "legal centralization." Each year, more and more functions of the local government are subjected to uniform national regulations.

In 1992, social protection was a voluntary function determined by local governments and performed according to local regulations. At present, there is a complex system of national statutes and secondary legislation issued by the Cabinet of Ministers. In 1996 there were diverse systems for primary and secondary health care organization in each district, because they were managed and financed by regional governments. Currently, there is a centralized financial and administrative system of health care where local governments function only as owners of hospitals. Until 2002, land use planning was under the authority of local governments, but in recent years there have been steady attempts to reduce that traditional local function through new national over-regulation.

3.2 Insufficient Publicity

Insufficient publicity is a factor that allows officials to be involved in conflict of interest situations and corruption. Latvian legislation determines that a high level of local government activities and decisions must be made publicly.

The Law on the Press and Other Mass Media (1990) determined that censorship and monopolization of the press and other mass media are not permitted. State and public organization officials may only refuse to provide information if it is not to be published in accordance with the law.

According to the Freedom of Information Law (1998-d), generally accessible information shall be provided to anyone who wishes to receive it, subject to the equal rights of persons to obtain information. The applicant shall not be required to specifically justify his or her interest in such information, and he or she may not be denied it because the information does not concern the applicant personally.

Restricted access to information is legal when the information:

- has been granted such status by law;
- is intended and specified for internal use by an institution;
- concerns trade secrets;
- concerns the private life of natural persons; or
- is related to certifications, examinations, submitted projects, invitations to tender, and other assessment processes of a similar nature.

Therefore, a major part of self-governmental information is generally accessible. The Law on Self-Governments (1994-e) sets some important conditions favoring publicity, including:

- meetings of self-government councils shall be public;
- decisions of councils, orders of chairpersons, and minutes of public meetings of self-government councils shall be publicly accessible, in order that persons residing or working in the administrative territory of the relevant local government, as well as journalists of the mass media, may acquaint themselves with such documents free of charge;
- self-government councils shall determine the procedures according to which public access is provided.

The law also establishes strong requirements for the preparation of an annual public report. The annual public report should include information regarding:

- 1) the allocation of the two previous years' budgets and the accepted budget of the current year, including funds allocated for obligations and guarantees;
- 2) the value of local government's real estate properties for the last two years;
- 3) the value of local government capital in undertakings and expected changes in it;

- 4) the measures performed in the previous two years, as well as those planned for the current year, in implementing the territorial development plan, including:
 - a) public investments in the infrastructure of the administrative territory of the local government;
 - b) private investment in the administrative territory of the local government, and the participation of residents and undertakings in discussion and improvement of the local government territorial development program and territorial planning;
- 5) the opinions of the sworn auditor on the economic activities of the local government, its institutions and undertakings, as well as the local government's annual report for the previous year;
- 6) the decision of the council regarding the annual report of the previous year;
- 7) the audit opinions of the State Audit Office and the measures taken by the council to rectify discovered deficiencies;
- 8) the participation of the local government in co-operation with institutions and companies;
- 9) the measures taken to improve the management of local government institutions and companies; and
- 10) the measures taken in order to promote the awareness of residents regarding the activities of the local government and the possibilities for their participation in the discussion of decisions.

Local governments may also add other information to their annual report.

The above-mentioned legal norms demonstrate a clear intent to involve civil society in matters of self-governance, and give the public wide access to basic information. Nevertheless, the tradition for preparing and disseminating public reports is not sufficiently strong. Unfortunately, central government policy tends not to facilitate local government's education and strengthen its capacity to improve public relations.

Problems of corruption, including conflicts of interest, have been the focus of public attention in recent years. One of the most popular NGOs is "Delna," which primarily focuses on this issue.⁷ A significant number of research projects have been completed by that NGO, particularly work supported by the EU-Phare program and by OSI.

Two research projects focused on the availability of information in public institutions. The first one was conducted from October 1999 to February 2001, and the second three years later (in 2003). In the period between the two projects, significant amendments were provided: In the Law On the Procedures for Reviewing Submissions, Complaints and Proposals in State and Self-Government Institutions a change created the right to verbal submissions; and the obligation to disclose information about public procurement was added in the Freedom of Information Law.

Among 300 cases of submissions about getting information 35 percent came from local government institutions. The situation with local governmental officials' responses could be characterized by the figures below:

- 5 percent of submissions were unsuccessful;
- 43 percent of answers were provided in 15 days;
- 26 percent of answers were provided in 30 days.

Attention from officials could be characterized by the fact that in 42 percent of the cases, representatives from local governments tried to get additional information about reasons behind the application for information. Such inquiries by officials is illegal.

In general, the quality of answers from local governments was approximately the same as that of central government institutions. There are no corresponding traditions of public society to utilize opportunities provided by law. A positive tendency can be discerned in recent years in the increased activities of NGOs and the mass media to deal with problems of openness of information.

3.3 Insufficient Compensation

The low level of compensation compared with the private sector is an incentive for public officials to engage in corruption. In this regard, the situation of local government employees is better than of those working in state civil service. Since 1998, self-governments councils have had the right to determine the level of compensation for their officials.

According to the Law on Self-Government (1994), among their exclusive competences, local government councils are authorized:

- to determine compensation for the duties of a councilor, the procedures for payment of such remuneration, and procedures for reimbursement of work-related expenditures;
- to determine the salary rates for the chairperson of the council, the deputy chairperson, employees of the territorial local government city or county council (parish council), and heads of local government institutions.

Those rights are not constrained by any restrictions issued by the central government. The Law on Self-Governments establishes the requirement of usefulness—the activities and decisions of self-government councils (parish councils) should be as efficient as possible.

Therefore, each local government can make separate decisions about compensation. Naturally, this leads to full political responsibility. Each decision about salary increases is always described negatively by the media; the councils are always under heavy pressure

by journalists in these cases. Decisions about balancing salary levels between the public and private sectors take political courage and entail many risk factors.

For the political opposition, it is always advantageous to declare the compensation of local government employees is too high. For the majority of the population, thanks partly to media reports favoring scandalous subjects over reporting on good developments, local officials are seen as unprofessional, stupid bureaucrats whose main line of business is to interfere with private activity. Publicity about attempts to introduce proportionality of compensation, i.e., equal pay for equal work, both in the public and private sectors, does not make any local politician more popular.

It would be much easier to make such decisions if the same problem were solved by the central government. Decisions of the central government about state civil service always draw public attention to corresponding self-government decisions. Unfortunately, in recent years, the Latvian government has not been ready to bring rational decisions in this area, submitting to populist pressures.

Another important constraint preventing local governments from introducing adequate compensation is insufficient financial resources. Financial centralization, always among the objectives of central government in the past nine years, leads to the reduction of relative local government resources, as compared to the central government. In some years, funding for self-governments was on the increase, but the general trend has been what one can see also during the last five years: Increasing the tasks of self-governments while funding is decreasing in relative terms means serious constraints to adequately address the issue of compensation on today's job market.

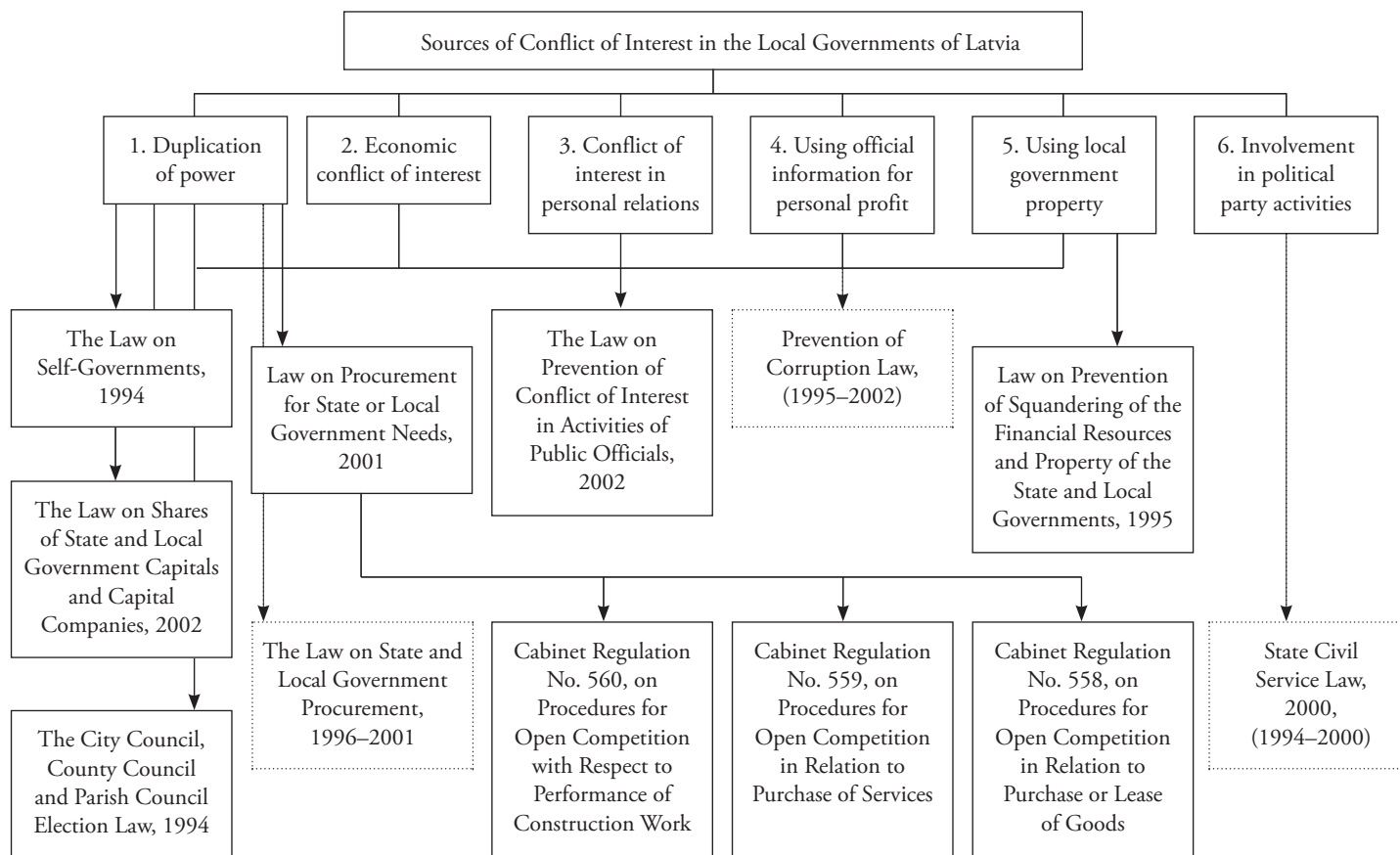
3.4 The System of Legal Restrictions

The system of legal restrictions to decrease potential conflicts of interest is illustrated in Figure 3.1. Traditionally that system consists of preventing:

- A) duplication of power;
- B) entering into contracts and supplementary remuneration;
- C) economic conflict of interest;
- D) conflict of interest of personal relations;
- E) using official information for personal profit;
- F) using local government property for personal profit;
- G) involvement of non-political employees in political party activities.

All the above-mentioned objectives were implemented during the first stage in the fight against corruption. Therefore, presently it is possible not only to describe corresponding legislation, but also to draw initial conclusions about six years' experience about enforcing such restrictions.

Figure 3.1
Latvian Legislation Prohibiting Conflicts of Interest in Local Governments



Dotted lines show three pieces of legislation in Figure 3.1. In all cases it means that the effect of the relevant national law is indirect. The Law on State and Local Government Procurement was in force from 1996 to 2001; since 2002, a new Law on Procurement for State or Local Government Needs has been in effect. The same applies to the Prevention of Corruption Law (1995–2002) and the Law on Prevention of Conflict of Interest in Activities of Public Officials, being in effect from the second half of 2002. In both cases, the latter law includes main elements of previous legislation.

The third “indirect” law is the State Civil Service Law. That law is not about employees of self-governments, but its influence is indirect, defining guidelines for principles of public service. The first piece of civil service legislation (1994-d) also includes civil service of local governments, but those legal norms were not implemented because, for the last six years, local governments have opposed central government efforts intention to abolish their independent authority in personnel matters (See also Chapter 2.).

The Law on Prevention of Conflict of Interest in Activities of Public Officials (2002-b) covers practically all kinds of restrictions. Duplication of power is covered also by the Law on Self-Governments, the City Council, County Council and Parish Council Election Law, and a new law on Shares of State and Local Government Capitals and Capital Companies. Economic conflict of interest is covered also by the Law on Procurement for State or Local Government and derived from that law's regulations (Cabinet of Ministers, 2001-a, b, c). The use of local government property is also covered by the Law On Prevention of Squandering of the Financial Resources and Property of the State and Local Governments. Involvement in political party activities was also covered by the State Civil Service Law.

The system of restrictions does not correspond strictly to the system of penalties and sanctions. The Law on Prevention of Conflict of Interest in Activities of Public Officials determines liability of public officials:

- 1) “Persons shall be held liable for violations of this Law as specified in regulatory enactments. Civil liability shall also apply to public officials in accordance with the provisions of this Section.
- 2) Income and financial benefits obtained by violating the restrictions specified in this Law or a proportional augmentation thereof shall accrue to the State, by presuming that by violating the restrictions determined by the State and illegally obtaining income or financial benefits, the public official has caused such harm to the State administrative order as is to be evaluated in financial terms and is proportional to the value of augmentation of income, financial benefits and property that are obtained in a prohibited way.

- 3) If a public official does not compensate voluntarily for the losses caused to the State, the State authority or the public official authorized by law has a duty to perform the necessary actions in order to claim compensation for the losses caused in accordance with the procedures determined by law.
- 4) Compensation for losses shall be requested in accordance with the procedures determined in the Civil Procedure Law.
- 5) The recovery of losses from the public official shall take place regardless of whether the public official is subject to administrative or criminal liability for violating the provisions of this Law.”

As far as criminal and administrative liability is concerned, the situation is illustrated in Chapter 4.7 of this report.

3.4.1 Duplication of Power

There is a widely held opinion that duplication of power leads to conflict of interest. The Law on Prevention of Conflict of Interest in Activities of Public Officials (2002-b) requires that:

“Chairpersons of local government city councils (parish or district councils), deputy chairpersons of city councils, executive directors of local governments and their deputies, heads of State and local government institutions and their deputies, as well as members of executive boards and councils of such State and local government capital companies, in which the State or local government’s share of the equity capital separately or in aggregate exceeds 50 percent, are permitted to combine their office of public official only with:

- 1) offices which such persons hold in accordance with laws, or Cabinet regulations and orders;
- 2) offices in public, political or religious organizations;
- 3) the position of teacher, scientist, doctor or creative work; or
- 4) other offices in a State or local government institution if such combination does not result in conflict of interest and written permission has been received from the public official or collegial authority which has elected, appointed or approved the relevant person in office.”

The City Council, County Council and Parish Council Election Law (1994-a) allows state officials, such as members of parliament, members of government, pros-

ecutors, judges, soldiers (except those, who perform active military service), to run in self-government elections. If they are elected, they lose the mandate of MP or their office, except soldiers retired from military service. Therefore, elected self-government councilors cannot take corresponding positions.

And vice versa: Self-government deputies can occupy those positions, but then they lose their position in self-government. The idea behind the division of offices is based on the general doctrine of separating powers as much as possible. At the same time, there is no evidence of an increase in conflict of interest in such situations because state functions and self-government functions normally have to be exclusive. Some conflicts could arise if self-government councilors can be judges and prosecutors, but excluding their participation in self-government could solve such problems.

During 1990–1993, some chairmen of local councils (mayors) were simultaneously members of parliament. That experience showed that mayors do not have enough time for active work as parliamentarians, but there were no cases of conflict of interest. In Latvia, the participation of local government councillors directly in Parliament's work could be a factor in strengthening local democracy.

There is another form of conflict of interest when a representative of an interest group takes office in a corresponding sector of the economy. For example, if the position of health minister is occupied by a physician. Then it could happen that the physician supports the interests of doctors, not those of patients. But in the case of self-governments, such conflicts could not be excluded, because council membership depends on elections.

3.4.2 Entering into Contracts and Supplementary Compensation

Conflict of interest can arise when officials enter into contracts with companies that receive municipal support or municipal orders. A similar situation occurs when officials get supplementary compensation from corresponding companies.

The Law On Prevention of Conflict of Interest in Activities of Public Officials (2002-b) requires that members of the council or executive board of a state or local government capital company shall not obtain any type of income from merchants who receive orders for state and local government procurement, except in cases where orders have been granted as a result of an open competition. These restrictions do not apply to income earned in a position at a private company in which the state or local government's share of the equity capital, separately or in aggregate, exceeds 50 percent.

Chairpersons of city and rajon councils and executive directors of these local governments should honor the above-mentioned restriction for a period of two years after they leave public office.

3.4.3 Economic Conflict of Interest

A gift is any financial or other kind of benefit, including services, transfer of rights, release from obligations, or refusal of any rights, in favor of a public official or his or her relatives, as well as other activities by which any benefit is granted to such persons. Small gifts, hospitality, and other benefits received by local government officials are regarded as forms of economic conflict of interest.

Detailed restrictions of this kind of conflict of interest are included in the Law on Prevention of Conflict of Interest in Activities of Public Officials. A public official is prohibited from accepting gifts directly or indirectly, except in cases specified by law.

According to the law, local government public officials are:

- mayors, executive directors of local governments and their deputies;
- councilors of local government councils;
- heads of local government institutions and their deputies;
- members of councils or the executive board of those private companies in which the local government has an equity separately or in aggregate of over 50 percent;
- members of councils or executive boards of local government capital companies;
- representatives of the holder of the local government's share of capital and their authorized persons;
- anybody who in the performance of their official duties with the local government authorities, in accordance with regulatory enactments, has the right to issue administrative acts, as well as to perform supervision, control, inquiry or punitive functions, in relation to persons who are not under their direct or indirect control, or to deal with the property of the local government, including financial resources, should also be considered public officials.

Exceptions are made for diplomatic gifts and gifts that are presented on public holidays of the Republic of Latvia and on days of commemoration and celebration; on the anniversary of the State or local government authority where the official works; or in other cases provided for by law. Those gifts shall be the property of the local government.

Public officials are permitted to accept gifts from their relatives independent of their public office. It is permitted for them to accept gifts from other natural or legal persons outside the performance of their official duties only if the value of the gift received from one person within a time period of one year does not exceed the amount of a minimum monthly salary and the public official has not issued an administrative act or performed supervision, control, inquiry or punitive functions in relation to the donor within a

time period of two years before the receipt of the gift. If a public official has accepted gifts from natural or legal persons outside the performance of their official duties, he or she is not entitled to issue administrative acts or perform supervision, control, enquiry, and punitive functions in relation to the donor for the period of two years after the acceptance of the gift.

A donation is the allocation (transfer) of financial resources, goods or services without compensation for specified purposes. Public officials are prohibited from requesting or accepting a donation or aid for public needs if it affects the taking of a decision in relation to a natural or legal person. Such donations or aid are also regarded as a source for conflict of interest.

A public official or collegial authority is prohibited from bringing any decision in relation to the donor for a period of two years after the acceptance of the donation or financial aid.

Involvement in business and share holdings in local government service is also regarded as a source of conflict of interest. The Law on Prevention of Conflict of Interest in Activities of Public Officials requires that mayors, their deputies and councilors, and executive directors of local governments shall not be shareholders, stockholders, or partners of commercial companies or individual merchants who receive orders from the respective local government, for procurement purposes for the local government, for financial resources, for local government-guaranteed credits, or for privatisation fund resources, except in cases where they are granted in open competition.

For two years after leaving public office, a public official is prohibited from accepting property from a merchant, or becoming a shareholder, stockholder, partner or officer in any commercial company that he/she had a professional relationship with while in office—whether making decisions on procurement for local government needs, allocating of local government resources and local government privatisation fund resources, or performing supervision, control or punitive functions.

A public official who is registered in the commercial register as an individual merchant in accordance with procedures specified in relevant regulations, and whose annual revenue from economic activities does not exceed 30,000 LVL (approximately 50,000 Euro), is permitted to combine public office with the economic activities of an individual merchant if the individual merchant receives income only from agricultural production, forestry, fishery, or rural tourism.

To reduce the possibility of conflict of interest, the Law on Procurement for State or Local Government (2001-a), and regulations (Cabinet, 2001-b,-c,-d) derived from that law, require that during the tender process the contracting authority shall not alter the composition of the commission, except in cases where a member of the commission has an interest in the choice or activities of a particular applicant, has died, or is not able to perform his or her duties due to illness or absence.

3.4.4 Conflict on the Basis of Personal Relations

Special requirements preventing work relations between relatives in self-governments do not exist. Legal stipulations of the State Civil Service Law (2000-d) could be regarded as a guideline in this respect. A person may be a candidate for a civil service position if they are not a relative (married to, or directly related to, or a brother or sister of) the head of an institution or a direct supervisor. The Cabinet of Ministers may determine exceptional cases if a relevant institution cannot otherwise ensure the execution of pertinent functions.

According to the Law on Prevention of Conflict of Interest in Activities of Public Officials, relatives to whom established restrictions apply include father, mother, grandmother, grandfather, child, grandchild, adoptee, adopter, brother, sister, half-sister, half-brother, and spouse.

Relatives shall not be the shareholders, stockholders or partners of commercial companies or individual merchants who receive orders from the respective local government for procurements for local government needs, financial resources, local government-guaranteed credits or privatization fund resources, except for cases where they have received the business through open competition.

A public official is prohibited from preparing or issuing administrative acts, performing the supervision, control, inquiry, or punitive functions, entering into contracts or performing other activities in which such public officials, their relatives, or other parties are personally or financially interested. The period of cessation for relatives is the same as for officials—two years.

Small local governments used to be hotbeds of nepotism. An old-boy network all too often protects the jobs of friends. Claims that no one else is available or that a job requires special experience mask a self-serving and cynical agenda whereby turf is protected by preventing the empowerment of well-trained new personnel (Karklins, 2002).⁸ The continued practice of nepotism in small rural self-governments can be blamed on two main circumstances:

- higher unemployment than in urban areas; incomplete structural reforms of rural economies; few available jobs for professionals in rural areas;
- scale—in cases when the local territory includes 400–1,000 residents (which is characteristic for one third of presently existing municipalities), it is not simple to divide economic activities between members of a family.

3.4.5 Using Official Information for Personal Profit

Using confidential information acquired during the performance of official duties is prohibited. According to the Law on Prevention of Conflict of Interest in Activities of Public Officials:

“It is prohibited to disclose unlawfully information accessible to a public official in connection with the performance of the duties of office of the public official or utilize such information for purposes not related to the performance of the duties of office of the public official or fulfilment of specific terms of reference.”

As far as personal data is concerned, that is protected additionally by the Physical Persons Data Protecting Law (2001-b). Each database of personal data (including applied procedures) is supervised by the State Data Inspection.

3.4.6 Using Local Government Property

According to the Law on Prevention of Conflict of Interest in Activities of Public Officials:

“A public official may act with regard to state or local government property, including financial resources, in accordance with the procedures provided by laws, government regulations, as well as binding regulations of self-government councils.”

Activities with state or local government property, including financial resources, covered by the law include drafting or making a decision to acquire state or local government property or transfer of ownership and the use, appropriation to other persons, or the re-allocation of financial resources.

A detailed system of restrictions has earlier roots in the Law on Prevention of Squandering of the Financial Resources and Property of the State and Local Governments (1995-b).

Local governments, local government institutions, enterprises, corporations, and other private companies in which local government's equity separately or combined exceeds 50 percent, shall administer the financial resources and property rationally, that is:

- 1) objectives are to be achieved with the minimum use of financial resources and property;
- 2) property shall be alienated or transferred to the ownership or possession of another person at the highest price possible; and
- 3) the ownership or possession of property shall be acquired for the lowest price possible.

There is a prohibition against transferring local government property to other persons for use without compensation, except in cases where:

- a local government transfers the property of one of its institutions for use by another institution of the local government;
- a local government transfers its property for use by another local government.

There is a prohibition against alienating local government property at a reduced price, except where property is sold at a public auction. It is also prohibited to acquire property for ownership or use, or to order services or work at an obviously inflated price. Local government institutions are prohibited from giving as a gift (donating) financial resources and property, except where specially provided for in laws or by Cabinet of Ministers regulations. When such requirements are not fulfilled, administrative or criminal liability applies.

Any Latvian citizen, including any journalist, has the right to get access to contracts granted for a gift (donation) registered by local government authorities.

There are special prohibitions concerning public aid according to the Law on the Control of State and Local Government Aid Provided for Entrepreneurial Activity (1998). Exceptions include those enterprises (companies) whose primary activity is related to education, health care, organizing sports events, social care, preservation of cultural and historical heritage, and environmental protection, if the aid is granted to conduct the relevant activity.

Therefore, in the area of economic activities with local government property, there is a comprehensive system of restrictions. Monitoring implementation, however, poses problems.

One problem is that the current system of restrictions covers too much. Progress in stricter control will be achieved by establishing and strengthening the Bureau for Preventing and Combating Corruption (2002a). The current national government is very impressed by results of a similar institution in Hong Kong.⁹ Setting up a single agency will lead to the expansion and intensification of investigations.

3.4.7 Local Government Employees' Involvement in Activities of a Political Party

The notion of a politically independent civil service is very popular. It was introduced in the first public administration reforms in 1993–1995. The first law on civil service (1994-d) establishes the political independence of civil servants. The last edition (2000-d) outlines a professional and politically neutral state civil service that performs administrative functions. That leads to the formal requirement “to be loyal to the lawful government irrespective of one’s political convictions.” Restrictions on membership in political parties or softer requirements, such as membership in party-affiliated political institutions, have yet to be covered by special laws.

Following the last parliamentary elections, the usefulness of political neutrality has been questioned. In order to “make state administration more effective and more honest” one of the first acts of the new government was to apply emergency rights to issue regulations with the power of law to amend the civil service law (2000-d). The prime minister has the right to dismiss senior civil servants in cases of “loss of confidence.” The State Civil Service Administration is accountable directly to the prime minister. Therefore, political influence on the recruitment and promotion of professional employees now has a legal basis.

Naturally, it is unacceptable for politically appointed supervisors to use local government employees for partisan political purposes in the performance of their official duties. This includes influence by any interest group, not only political parties, and has to be regulated by other legal statutes. There are no formal restrictions on local government employees’ membership in political parties. Job relations between professional employees and the mayor are regulated by civil law.

Special legislation on lobbying national authorities and self governments in Latvia has not been drafted or enacted into law. Therefore, in principle, anything is permissible that is not covered by effective laws.

Local governments have full political responsibility for their executive structure and staff. In cities where only the election of political parties is allowed, it is common to appoint senior officials on a political basis.

4. INSTITUTIONS AND PROCEDURES TO PREVENT AND DETECT CONFLICT OF INTEREST

4.1 Map of Corresponding Legislation

The main areas of preventing and detecting conflicts of interest are:

- disclosure policy;
- procedures to report misconduct or suspected conflict;
- other measures assisting prevention;
- external and internal control supporting prevention;
- accountability and responsibilities of local government officials.

Actual examples of the disclosure policy and procedures to report misconduct is described in the Law on Prevention of Conflict of Interest in Activities of Public Officials; other “indirect” pieces of legislation (marked by dotted lines) have not directly attributed to self-governments or have historical influence.

Other measures cover a set of procedures concerning issuing and disputing administrative acts,¹⁰ public procurement,¹¹ property-related activities,¹² the organization and supervision of public agencies,¹³ and financing political parties.¹⁴

Supervising institutions and procedures to prevent conflicts of interest are described by primary legislation.¹⁵

Accountability and responsibilities of local government officials are described by legislation on procedures of accountability of officials, revision procedures,¹⁶ submissions,¹⁷ criminal liability,¹⁸ and administrative liability.¹⁹

4.2 The Current System of Declaration

Local government officials have a duty to submit declarations by public officials. Declarations have to be submitted:

- when assuming office;
- for the current year;
- upon terminating public service; and
- after public service has been terminated.

Declarations have to be submitted to the Prevention and Combating of Corruption Bureau (until recently the agency was the relevant unit at the State Revenue Service). An annual declaration by self-government official must be submitted each year by April 1.

In the declaration, a public official must specify (both with respect to Latvia and foreign states) the following:

- 1) his or her given name, surname, personal identification number and place of residence, as well as the given name, surname, personal identification number, place of residence and relationship of his or her spouse, parents, brothers, sisters, and children;
- 2) his or her office as a public official;
- 3) information on other offices that the public official holds in addition to the in public office, as well as information on the work-performance contracts or authorizations which he or she performs or in which he or she performs specified obligations;
- 4) information on real estate property in his or her possession (including the properties rented from other persons) and information on real estate stemming from guardianship or trusteeship;
- 5) information about whether the public official is an individual merchant, shareholder, stockholder, or partner of a commercial enterprise and information about ownership of shares, stock and securities;

- 6) information on vehicles used by the public official, as well as vehicles owned or leased for their personal use;
- 7) information on cash or non-cash savings if their amount exceeds 20 times the minimum monthly wage;
- 8) information on any kind of income earned during the reporting period;
- 9) information on business dealings with amounts exceeding 20 times the minimum monthly wage, including specifics on the amount of such transactions and the parties to them;
- 10) information on debts that exceed 20 times the minimum monthly wage, with specific information about the amount of such debt and the debtor or creditor respectively;
- 11) information on the amount of loans given if the total amount of such loans exceeds 20 times the minimum monthly wage; and
- 12) information that the public official wishes to specify in the declaration.

In order to ensure the protection of personal data, the declaration contains a section that is publicly accessible and one that is confidential. The publicly available section contains all the information included in the declaration except for the official's place of residence and personal identification number, the official's relatives and other private persons mentioned in the declaration, as well as other parties, including debtors and creditors specified in the declaration.

Public access means the right of members of the mass media and other persons to access the declarations of any public official, as well as to publish the information included therein.

The declarations by the councilors of city councils (*pagasts* or district councils) have to be published in the official newspaper *Latvijas Vēstnesis*, no later than one month after submission, and published simultaneously on the Internet. The Prevention and Combating of Corruption Bureau must send these declarations for publishing.

Some Latvian authors²⁰ argue that the current disclosure policy is inefficient and needs substantial improvements. Some of its weakest points are:

- the declaration does not prevent legalization of criminally obtained funds;
- information on relatives of officials is not sufficient.

Administrative responsibility applies for inadequate fulfilment of disclosure obligations. One of the proposals of the corruption prevention program is the introduction of initial declarations. Those could be declarations, filled out by all physical persons—in other words taxpayers.

The first version of the annual declaration of income was published in 1990. Unfortunately, it was not implemented. Presently, annual declarations are filed only by those taxpayers who apply for a refund.

4.3 Attempts to Introduce Codes of Ethics

One way to prevent conflicts of interest could be based on codes of ethics. In the early 1990s, the Council of Ethics was established in order to improve performance of state and local government institutions. That Council was a private voluntary organization, including supporters of state administrative reform and representatives from local government training centers (private enterprises established by local governments and their association—the Union of Local and Regional Governments of Latvia).

During that period, the idea of adopting codes of ethics was discussed. Some local governments, for example one in Jekabpils city, adopted such a code by the council's decision. Unfortunately, that approach has not had practical consequences.

The usefulness of codes is not lost, nevertheless. There was another attempt in the process of the state administrative reform—the Cabinet of Ministers adopted regulations on rules of state officials' performance, trying to introduce norms of ethics through mandatory regulation. Conferences and seminars were organized to support such measures. There is no information about practical consequences of those measures.

4.4 Report on Misconduct or Suspected Conflict of Interest

There are no obligations for local government officials to report misconduct by fellow government officials. Detailed obligations for local government officials to report potential or actual conflict of interest situations appear in the Law on Prevention of Conflict of Interest in Activities of Public Officials (2002-b).

A person who assumes public office as a self-government official is not permitted to simultaneously hold another position or perform work on contract or commission; and they have a duty to declare it in writing that they will:

- 1) notify a mayor (executive director, head of local government institution) of the fact that they hold an office (perform a work on contract or commission) as well as public office; and
- 2) submit a request to be released from their relevant office (notification regarding withdrawal from the work-performance contract or authorization) to the authority in which the person holds office. The request has to be answered in one month.

A public official is prohibited in his official capacity to draft or issue administrative acts, supervise, control, perform inquires or punitive functions, enter into contracts, or perform other activities in which they, their relatives or other concerned parties are personally or financially interested.

Public officials shall without delay provide information in writing to a higher public official or collegial authority regarding:

- 1) their financial or other personal interest, as well as financial or other personal interest of their relatives or counter-parties regarding the performance of any action included in the duties of their office;
- 2) commercial companies of which the official or his or her relative is a shareholder, stockholder, partner, member of a supervisory, control or executive body; the fact that the public official or a relative is an individual merchant who receives orders from the relevant state or local government authority for procurement for the state or local government, state or local government financial resources, credits guaranteed by the state or local governments or state or local government privatisation fund resources, except when they are allocated as a result of open competition.

After the receipt of requested information, an executive public official or collegial authority has to reassign the public official. If misconduct or suspected conflict of interest is not reported, then sanctions could be applied, including disciplinary sanctions (concerning civil servants), administrative, or criminal liability.

4.5 Other Measures

The important legal norm that is intended to reduce bureaucracy by increasing responsibility of any public official and that is recognized by Administrative Procedure Law (2001-c) means that:

“Institutions and courts may not refuse to decide an issue on the ground that it is not regulated by law or other external regulatory enactment (prohibition of legal obstruction by institutions and courts). They may not refuse to apply a norm of law on the ground that such norm does not provide for the mechanism of application, it is not exhaustive or no other regulatory enactments have been issued which would more closely regulate the application of the relevant norm. This shall apply only in cases where an institution, which is required to apply this norm or participate in its application in another way, has not been established or is not operating.”

For Latvian tradition this is a revolutionary norm not yet sufficiently applied. An administrative act may be disputed by a submitter, an addressee, a third party, a legal entity, or by a person whose rights or legal interests are restricted by the administrative act and who has not been invited to participate in the administrative proceeding as a

third party. The act may be disputed at a higher authority in accordance with procedures regarding subordination. Usually the higher authority is the council of self-government, except for functions delegated by the state. If there is no such institution, an administrative act may be immediately appealed in court.

Concerning public procurement, the corresponding Law on Procurement for State or Local Government (2001-a) has tended to fight potential corruption, rather than increase competition and improve public administration. For example, the contracting authority must announce a tender if the amount of the procurement for the purchase or lease of goods is between 1,000 to 10,000 lati. Until November 2000, the maximum contract price was 5,000 lati—approximately 40 times less than the average in EU countries.

In effect, complicated procurement procedures were prevalent in granting very small contracts. As a result there was a substantial decrease in the efficiency of public institutions which spent a lot of time and money on expensive bureaucratic procedures. The motivation behind such legislation was a mistrust of public officials and a priority on legality over efficiency.

At the same time, procurement procedures are strongly criticized in many studies for inefficiency to achieve anti corruption goals.²¹ The criticism mainly concerns insufficient transparency and procedures which allow bidding where the requirements apply only to one pre-selected petitioner.

Among the procedures for dealing with local government property the Law on Prevention of Squandering of the Financial Resources and Property of the State and Local Governments (1995-c) is especially important, as well as the latest pieces of legislation on Shares of State and Local Government Capitals and Capital Companies (2002-e).

Until now, a substantial number of state and senior local government officials have supplemented their income by performing work as representatives of private enterprises. For many self-governments, the annual turnover of such companies used to be greater than their annual budget.

Statistical data about the above-mentioned phenomena are not available. The significance of such supplementary income could be estimated from the annual income declarations by mayors and councillors at local governments which have to be published in the official newspaper *Latvijas Vēstnesis*. Equally, there are public disclosures by cabinet ministers and parliamentary secretaries, as well as members of parliament. General conclusions are based on particular investigations of journalists and on personal observations of the author.

This system has existed until the last amendments in legislation and went against the internal remuneration system in self-governmental establishments. That system used to be heavily influenced by politicians and thereby closely connected to conflicts of interest.

The new legislation defines a shareholder as a legal person—a self-government itself or institution, appointed by the council of a self-government. The mayor should bring decisions on behalf of the shareholders. The council could also delegate this responsibility to the head of an institution created by self-government.

The chairman of the local government council (mayor) has to appoint a responsible person who prepares the required documents and can participate in shareholder meetings on behalf of the mayor. The appointed person can only vote in cases when he knows the mayor's position. Remuneration for performing these functions has to be paid from the local government's budget (not by the company, as was typical until 2003).

The council of the local government can decide about issuing personal shares. Personal shares are without voting rights. These requirements are adopted to reduce conflicts of interest in the management of local government controlled enterprises.

4.6 Accountability and Control Supporting the Prevention of Conflict of Interest

Latvian legislation determines disciplinary responsibility for civil servants who are in conflict of interest. That legislation does not concern local government officials. Additionally, there is administrative and criminal liability.

Penalties can range from censure, to reduction in salary for as long as three years, to confiscation of property.

Administrative liabilities can entail the imposition of a fine, such as:

- 25 LVL (approximately 40 Euro);
- 250 LVL (approximately 400 Euro), in the most severe cases;
- 250 LVL with confiscation of the accepted gift.

Criminal liabilities can entail:

- imprisonment for up to 15 years;
- imprisonment, with confiscation of property;
- imposition of a fine of up to 100 times the minimum wage.

There are many options for penalties. At the same time, state institutions don't actively exercise these options. The most active in recent years has been the corruption prevention unit (in the internal structure of the State Revenue Service) which deals with annual declarations of income by public officials. The central government intends to shift anti-corruption activities to a stronger approach, based on the new Bureau of Preventing and Combating Corruption Law (2002a), and to introduce the Hong Kong model.

Criminal statistics show that addressing corruption is not one of the priorities of different structures that handle the problem.²² Criminal cases used to be registered and convictions brought mainly in cases of bribery, or some economic cases.

To reduce conflicts of interest, external and internal controls should be effective. Latvia's monitoring institutions are severely fragmented, and this applies not only to state administration, but also to local governments.

The main forms of control are:

- 1) external financial controls performed by the State Treasury (according to the Law on Budget and Finance Management, local governments prepare detailed monthly reports);
- 2) internal audits of departmental practices and finances of local government units, performed by Revision Commissions (from 1999 those commissions have not been compulsory, but more than half of the local governments voluntarily set up such audit commissions);
- 3) external control of public procurement performed by the Ministry of Finance (the Procurement Monitoring Bureau, created according to the public procurement law (2001-a);
- 4) external control of legality and usefulness performed by the State Audit Office (1995-d, 2000-a);
- 5) external financial control, performed by auditors or private audit companies (obligatory annually for each local government and each local government institution, (1994-e));
- 6) external legal supervision performed by central ministries (according to sectoral legislation), and by the minister responsible for supervision of self-governments (1994-e);
- 7) external legal supervision performed by state prosecutors (1994-f);
- 8) external supervision of the State Bureau of Human Rights, which participates in cases of individual persons' submissions.

The weakest point in this system of monitoring is the insufficient performance audit, because such a management culture has not been developed in Latvia. Since 1998, the main support of EU and other international organizations has been to increase administrative capacity of the central government, while the administrative capacity of self-governments almost fully depends on them. In the future, the role of the Bureau to Prevent and Combat Corruption (2002-a) must be substantially increased.

The introduction of the institution of ombudsman is under discussion. The draft law proposes the creation of an office that would include five ombudsmen, one of whom could be the ombudsman for self-governments.

5. CONCLUSION

Latvia has a wide set of legislation to prevent conflict of interest, treating it as a core problem in combating corruption. Many legal norms have been adopted and have been implemented since the early 1990s. Since 1995, there has been a unified approach to the prevention of conflict of interest in central and local government institutions. The main novelties are the introduction of a mandarin-type civil service for state institutions and the organization of local government administration on the basis of private contracts.

To characterize the situation in Latvia, one could reasonably apply the classification proposed by the investigation of corruption performed by the Open Society Institute in Central and Eastern European countries.²³ Four approaches have been distinguished to fight corruption:

- a) *The “criminal and administrative control” approach* (anti-corruption policy consists of establishing and enforcing effective criminal law provisions combined with effective formal control mechanisms in the public administration).
- b) *The “small government” approach* (using the assumption that minimizing the role of government is the solution).
- c) *The “political economy” perspective* (policy leads to public administration reform programs to increase transparency and accountability).
- d) *The Multi-pronged Strategy/National Integrity System Perspective* (structural efforts to enhance state capacity and public sector management, strengthen political accountability, enable civil society, and increase economic competition).

One can argue for a combination of all four approaches for best results. Nevertheless, analysis of particular municipal problems can be the basis for deciding the most effective approach, and such analysis could be more fruitful for further development. Major pieces of legislation provide a detailed set of restrictions for public officials. The institutional system is very fragmented, the administration of anti-corruption legislation weak. The national program to prevent corruption (2001-a) is based on the concept of strengthening control by the central administration and it clearly leans towards approach (a). For small local governments, much better results could be achieved by minimizing the role of the central government, approach (b).

Among other problems, the issue of over-regulation must also be mentioned. Too much legislation reduces flexibility, which is a characteristic of good local governance. Too many restrictions and permissions increase the potential for conflict of interest.

For small local authorities, the contradiction between efficiency and strong regulation is more obvious than for large administrative units. Good local governance could be more result-oriented than governance at the national level. Therefore there is a good argument for keeping local government executives out of civil service.

To improve self-governments, decentralization of responsibilities and funding is necessary. This is the best way to increase efficiency and combat corruption. At the same time, approach (b) could not work without increasing transparency and involving civil society. In that sense one can argue for developing procedures of self-governments' public reports and strengthening openness; strengthening the role of the Bureau to Prevent and Combat Corruption; and improving liability mechanisms.

The main policy proposals based on documented research include:

- 1) Prepare and implement a national program supporting dissemination of knowledge about facilities to NGOs, so they can monitor the activities of public officials.
- 2) Introduce the ombudsman institution (including self-government ombudsmen), representing citizens and entities in cases when actions of officials seem to violate laws or codes of ethics.
- 3) Support and develop activities of the Bureau to Prevent and Combat Corruption, thereby strengthening penalties for officials involved in conflicts of interest.
- 4) Discuss reduction of over-regulation, decrease the number and scope of regulation for state and local government institutions. Such reduction should be done by developing stronger rules to ensure openness of public institutions' activities.
- 5) Stop the process of centralization of functions and funding by central government in recent years; and, consequently, increase the role of local communities and public trust in the values of local democracy.

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- ¹ <http://www.delna.lv>
- ² Open Society Institute (OSI), *Monitoring the EU Accession Process: Corruption and Anti-corruption Policy*, 2002.
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- ⁵ Ibid. pp.203–225.
- ⁶ Klitgaard, R. (1998). *Controlling Corruption*, Berkeley: University of California Press.
- ⁷ See websites www.delna.lv, www.pretkorupcija.lv, etc.
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- ¹⁰ Administrative Procedure Law (Saeima, 2001-c).
- ¹¹ Law on Procurement for State or Local Government Needs (Saeima, 2001-a).
- ¹² Law on Privatisation of State and Self-Government Property (Saeima, 1994-b), Law on Order of Alienation of State and Self-Government Property (Saeima, 1995-b), Law on Prevention of Squandering of the Financial Resources and Property of the State and Local Governments (Saeima, 1995-c), Concessions Law (Saeima, 2000-a), Law on Shares of State and Local Government Capitals and Capital Companies (Saeima, 2002-e).
- ¹³ Public Agencies Law (Saeima, 2001-d).
- ¹⁴ Political Organizations (Parties) Financing Law (Saeima, 1995-a).
- ¹⁵ Law on the State Audit Office (Saeima, 2000-g), Law on State Revenue Service (Saeima, 1996-c), Law on Public Agencies (Saeima, 2001-d), Law on the State Bureau of Human Rights (Saeima, 1996-b).
- ¹⁶ Law on Self-governments (Saeima, 1994-e) and Law on the Status of Councillors in City Councils, District Councils, County Councils and Parish Councils (Saeima, 1994-c).

- ¹⁷ Law on the Procedures for Reviewing Submissions, Complaints and Proposals in State and Local Government Institutions (Saeima, 1994-d).
- ¹⁸ Criminal Law (Saeima, 1998-b).
- ¹⁹ Latvian Codex of Administrative Responsibility (Supreme Council, 1984).
- ²⁰ Kalnins, V., *Latvia's Anticorruption Policy*.
- ²¹ Kalnins, V., *Latvia's Anticorruption Policy*; Open Society Institute (OSI), *Monitoring the EU Accession Process: Corruption and Anti-corruption Policy*, Tieslietu ministrija, Korupcija Latvijā un tās apkarošanas sistēmas pilnveidošana, 2002.gada oktobris, (Corruption in Latvia and Improvement of Its Combating System).
- ²² See OSI, p.295, Table 1.
- ²³ Open Society Institute (2002).

Difficulties with Implementation of Conflict of Interest Regulation in Polish Local Government

Patrycja Joanna Suwaj

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Difficulties with Implementation of Conflict of Interest Regulation in Polish Local Government

Patrycja Joanna Suwaj

1. INTRODUCTION

This report is part of comparative, comprehensive studies on regulations to prevent conflict of interest in CEE countries. The present report focuses on Polish local governments, and its scope is to present the legal framework for conflict of interest in Poland with regard to some practical issues. On the basis of an analysis of the functioning instruments, we have evaluated the efficiency of the current legal solutions that support conflict of interest prevention and counteraction. We have also made some policy and *de lege ferenda* recommendations to improve existing regulations.

Despite the fact that in Poland there has been an analysis of corruption as a phenomenon in public life, as well as public opinion polls on this topic (provided by Transparency International, the Polish Stefan Batory Foundation, Council of Europe reports, and OECD reports), at the same time, there is a lack of a comprehensive study on identifying and preventing conflicts of interest. According to all reports, the level of corruption, especially in public office, is high, and the problem is getting worse.

1.1 Corruption and Conflict of Interest Perception

In a 2001 Report on Poland, considered by the European Commission as one of the more corrupt candidate countries, the Commission commented that:

“Irrespective of whether the specific allegations turn out to be true or not, there is a general perception that corruption is widespread. This is damaging both domestically and internationally.”¹

The Corruption Perception Index (CPI) 2002 places Poland in the 45th place with a score of 4.0, after such countries as Slovenia (27th) with a score of 6.0, Estonia (29th) with a score of 5.6, Hungary (33rd) with a score of 4.9, Belarus, and Lithuania (36th)

with a score of 4.8. The CPI study ties the degree of corruption to the perception of business people, academics, and risk analysts, and it ranges between 10 (highly transparent) and 0 (highly corrupt)² and focuses on corruption in the public sector. The CPI defines corruption as the abuse of public office for private gain, with a focus on bribe-taking by public officials.

It is generally known that corruption is a serious threat to the state's normal functioning. It has been pointed out that it destroys not only legalism and free competition, but the whole economy, changing a free market into a "market of dependencies."

The significance of the problem has been acknowledged in Poland since the beginning of the transition process. In 1991 almost three quarters of Polish society (71 percent) considered corruption in Poland a serious problem. In 1992 there was a jump in the number of people (from 71 percent to 86 percent) who thought that corruption is a serious problem, and in those who considered it a very serious problem. A similar poll was done in July 2000. The poll of August 2001 showed another jump (from 86 percent to 93 percent) of respondents considering corruption a serious problem.

In February 2003 91 percent of Poles were aware of the significance of the corruption problem.³

Table 4.1
What Do You Think of Corruption in Poland?

	Respondents' Answers According to the Year [%]				
	July 1991	February 1992	July 2000	August 2001	February 2003
Very serious	33	49	46	68	68
Serious	38	37	40	25	23
Not serious	15	8	6	2	2
Almost none	2	1	0	1	0
Hard to say	12	5	8	5	6

Source: CBOS, February 2003.

There is a strong conviction that corruption exists both at the central and local level. In February 2003, 61 percent of all respondents stated that abuse of power happens with the same frequency at the central and local level.

The criticism of public officials is even more pronounced if we take a look at the practice. According to the respondents, the most frequent wrongdoing among public officials is nepotism (favoritism based on kinship) and cronyism (favoritism based on informal links). And this is one of the most important issues covering conflict of interest,

since it may appear not only in the financial dimension (as with cases of corruption) but also in a “gray area.” When private or personal interests come into conflict with public obligations, “official duties,” there is conflict of interest. This conflict usually interferes with professional responsibilities, threatening the impartiality of professional behavior.

Table 4.2
In Your Opinion, is the Abuse of Power More Frequent
at the Central or Local Level?

	Respondents' Answers According to the Year [%]			
	September 1995	July 1999	July 2000	February 2003
More often at the central level	24	15	17	18
With the same frequency	56	57	58	61
More often at the local level	10	14	13	12
Hard to say	10	15	12	9

Source: CBOS, February 2003.

Ninety-one percent of Poles believe that it happens frequently that relatives, co-workers, and friends receive positions in public offices, banks or public companies, while 59 percent think this happens “very often”; 81 percent of respondents believe that granting public contracts to family or friends takes place frequently; and almost 85 percent think that public officials in Poland generally accept bribes in their official duties.

In research carried out within the Anticorruption Program and the Institute of Public Affairs (Kubiak, 2001), attempts were made to reach a common, spontaneous definition of corruption, and thus, at the beginning of the interview, the respondents were asked to supply a definition.

The greater majority of respondents identified corruption with bribery and graft (76 percent). There was a large proportion of people who were unable to say what corruption meant (22 percent). Some responses, such as “hard to say,” may also mean an unwillingness to seriously consider the issue or to give an answer. The percentage of responses showing a lack of knowledge or difficulty understanding the term vary in accordance with the social and demographic features of the respondents.

It is significant that Polish society as a whole does not link corruption with conflict of interest (only 5 percent of respondents connect corruption with conflict of interest issues such as favoritism, nepotism, i.e., staffing positions with family members and friends, taking care of matters through connections and special arrangements, etc.).

Conflict of interest is not a concept generally known and understood. Especially recently, with many references to it in media reports on public life, one might think that the definition is quite obvious (as an aspect of corruption) on the one hand, and is ambiguous on the other. For people who are not interested in political matters, conflict of interest quite often is a word not understood. Generally, corruption in local governments exists and is recognized by local officials, but when it appears in the form of conflict of interest it is not always disapproved. It's not considered an important matter.

Table 4.3
What Do You Think About the Abuse of Power?

	April 1997	July 1999	July 2000	February 2003
	Frequent [%]			
Giving public contracts to a family, friends	78	73	78	81
Taking bribes	72	74	79	85
Giving posts in public offices to relatives and friends	69	84	87	91
Using public money for a political party	56	58	65	67
	Rare [%]			
Giving public contracts to family, friends	9	10	10	6
Taking bribes	13	8	8	5
Giving posts in public offices to relatives and friends	13	4	5	2
Using public money for a political party	15	11	12	10
	Hard to Say [%]			
Giving public contracts to family, friends	13	17	12	13
Taking bribes	15	19	12	10
Giving posts in public offices to relatives and friends	18	11	7	7
Using public money for a political party	29	31	23	23

Source: CBOS, February 2003.

Conflict of interest in Poland, however, is not a term in the legal vocabulary. Even though there are many regulations designed to prevent or combat conflict of interest, these laws and regulations themselves do not contain the concept of "conflict of interest." Therefore there is no accepted legal definition for it.

1.2 Counteracting Conflict of Interest: The Historical Perspective

Since the beginning of the 1990s, Poland has made great efforts to reduce conflict of interest, particularly by introducing new laws. However, there is not one single law dealing with the problem of corruption and conflict of interest in Poland. Different regulations are provided by a number of laws, from the Polish Constitution to administrative law, to labor, criminal, and civil laws.

For the purposes of this analysis, I divide pertinent legislation into three main groups. The first one consists of general, constitutional regulations supporting limitations of conflict of interest.⁴ The second is legal prescriptions to prevent conflict of interest; and the third group consists of laws that concern procedures supporting the limitations to conflict of interest.

The Law on Community Self-Government (1990) initiated the process of building a decentralized local government. Also, the Law on Local Government Employees (1990) has created the first professional group of local government public officials. But the process of turning attention to corruption issues started in 1997, with the implementation of the law on reducing opportunities to do business for persons in public office. That law, called the "Anticorruption Act," initiated the process of developing and implementing a number of legislative and other measures against corruption and conflict of interest. As the report on Corruption and Anti-Corruption Policy in Poland assumes, none of the initiatives were introduced by the Government (EU Accession Program, p.405).

However, to a great extent, many of those laws remained on paper mainly because not enough emphasis has been placed on their efficient enforcement. In view of the instances of corruption that have come to light, the tendency is to pass new laws rather than enforce the existing ones. As many reports pointed out, instead of passing new laws, some of those already in effect should be amended and their institutional enforcement strengthened. In some cases the law only specified what is considered illegal but did not include provisions for consequences or sanctions for violating those regulations.

Also, the EU accession process has had a major impact on the legal and institutional framework to counteract conflict of interest. Commission pressure has led to important legislative changes, especially in the area of anticorruption legislation.

In the autumn of 2002, the Polish government developed a prospective state strategy for combating corruption.⁵ The strategy proposed a three-tiered program for fighting corruption. The project also determined tools to prevent conflict of interest. One tier is legislative changes. The second one consists of organizational changes, and the third, educational and informational actions.

As the Council of Europe's GRECO recommended, the Polish authorities made a commitment in their strategy to take steps towards progressively reducing the scope of discretionary powers of administrative officers, and to enhance the transparency of the

procedures and abolish, whenever possible, licensing and authorization procedures for many economic and social activities.⁶ The strategy also obliges the Minister of Interior to prepare a draft for a law creating a corps of local government employees, as well as to prepare a draft for a law concerning auditing in local government.

As for the organizational improvements, the Minister of Interior is obliged to introduce a training program on ethics for local government officials. In the educational and informational respect, the same minister will promote the program called “Friendly Office,” which will comprise basic standards for local government administration. *E-Government* services are also an instrument in the strategy to make local government more transparent and the process of making administrative decisions objective.

The Polish government has put in place an anticorruption strategy that reflects the fact that the strategy is “top down,” created at the high level with little or no involvement of civil society, lower level officials or even the Parliament. For example, the obligation for the minister of interior to draft and introduce new regulations on additional employment of local government employees or new mechanisms to control the declarations of income coincided with the Polish Parliament developing similar regulations since May 2002.

On November 27, 2002, the Polish Parliament passed a new law responding to internal pressure by, among others, the World Bank, OECD, The Council of Europe or EU, and internal pressure by the Supreme Auditing Chamber-NIK and NGOs. The new law implements a significant modernization of anticorruption rules at all local government agencies. That law has been in force since January 1, 2003.

2. THE GENERAL CONTEXT FOR PREVENTING CONFLICT OF INTEREST AT THE LOCAL GOVERNMENT LEVEL IN POLAND

2.1 Local Government Structure and Functions

Public administration reforms have been a fundamental element of the systemic transformation of Poland’s local self-governments in 2,478 communities since 1990. The creation of communities after the fall of communism has proved a great success. The 1998 reforms have introduced two new levels of self-government and significantly reduced the central government’s administrative presence at the sub-national levels. According to a decision by the Polish Parliament in the summer of 1998, Poland has transferred responsibilities and financial capacities to 314 districts (including 65 urban communities that were granted district rights). The reforms have also radically reduced the number of existing regions (voivodships) from 49 to 16 regions, enabling them to create regional development policies.

Public administration reform has radically changed intergovernmental relations in Poland, as well as its fiscal and territorial structure, by decentralizing control over public services and public finance to two new levels of democratically elected self-government. They have independent legal identities with independent budgets. As a result, the reforms have brought about significant decentralization of both public authority and public finance.

In the system of Polish local government, communities form the basic and most important level of public administration. It is here that the most important collective needs of local citizens are met. District self-governments, with an average population of 80,000–100,000 inhabitants, are responsible for local issues that, due to the subsidiary and proportionality principles, cannot be ascribed to communities. The 16 new regions are quite large, with populations ranging between approximately 1 and 5 million, and an average population of approximately 2.4 million. Regions are responsible for the regional development policy programs.

One of the basic premises of the reforms was the idea that the transparency and openness of public decisions must be improved. This meant eliminating unclear and complicated administrative procedures at various levels of government, streamlining administrative structures, radically reforming the system of public finance, and delegating new powers to democratically elected local and regional authorities. Table 4.4 shows the structure of organs (authorities) of self-government in Poland.

Table 4.4
Polish Local Government

	Community (2,478) (<i>gmina</i>)	District (314) (<i>województwo</i>)	Region (16) (<i>powiat</i>)
Constitutive organs	Council	Council	Council
Executive organs	Mayor	Board, <i>Starosta</i>	Board, <i>Marszałek</i>

Councils are authorities with constitutive prerogatives acting as collective bodies. They are responsible for making local (district or regional) policy, as well as decision-making in the area; they draft local regulations as well. The councilors are elected in general elections. The councils in turn elect executive boards to exercise the executive authority in self-governing units, except for the community tier, where there is no board and the mayor and council are elected in direct elections. The executive district board is headed by the head of the district executive board (*starosta*), the board of the region by the *marszałek*.

According to the poll of February 2003 poll to evaluate political institutions, half of the respondents (50 percent) evaluated positively the activity of their own local government unit, while almost 31 percent held the opposite opinion.

Table 4.5
Assessment of Local Authorities' Activities

	Respondents' Answers According to the Year [%]	
	Marks	
	Good	Bad
June 1998	62	27
September 1998	61	27
December 1998	58	25
May 1999	54	32
September 1999	54	32
January 2000	57	29
June 2000	52	34
December 2001	51	34
June 2002	49	35
June 2002	52	28
January 2003	46	29
February 2003	50	31

Source: CBOS, February 2003.

2.2 Local Government Public Officials: The Subject for Regulations on Preventing Conflict of Interest

The subjective scope of the problem might concern the following local government officials: *local government employees*, *senior officials*, *councilors* and *director* and *managers* of local government units.

The first group—*local government employees* consists of senior employees, such as secretaries and book-keepers and other local government employees. Local government employees usually do not act on their own, they are authorized to act on behalf of decision-makers. This group is usually a permanent, merit-based staff

The second group consists of directly or indirectly elected or appointed *local government senior officials*. The directly elected mayors play the role of executive authority; they are decision-makers, bringing administrative decisions in individual cases. The indirectly elected local government senior officials include the deputy mayor, appointed by the mayor, the head of the district executive board (*starosta*) appointed by the district

executive board, the marshal (*marszałek*) appointed by the regional executive board, as well as executive board members in districts and regions. Heads of the district executive boards and marshals have double responsibilities: They head the executive boards of the local government, and they bring administrative decisions in individual cases. The common denominator in this group of local government public officials is that they are usually political appointees.

Figure 4.1
Local Government (LG) Public Officials

LG EMPLOYEES Senior employees Secretaries Treasurers Other LG employees	SENIOR OFFICIALS Major <i>Starosta</i> <i>Marszałek</i>	COUNCILORS of: Community District Region	Director of LG units Manager of LG companies
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The third group consists of *councilors of the three-levels of local government* (communities, districts, and regions). The directly elected councilors have substantial power and responsibilities, drafting local legal regulations and making policies; they act as community executives. They are politicians as opposed to professional managers.

The *directors of local government units* are, for example, primary- and secondary school principals and hospital directors. A *manager of a local government company* can be, for example, a director of communal sanitation company.

Each of these groups can be potentially influenced by conflicts of private, personal or institutional interests that affect their objectivity in performing their official duties.

2.3 Potential Sources of Conflict of Interest in Polish Local Government

Opportunities and incentives for conflict of interest have been growing sharply since regional reforms were implemented and a massive shift from central to local tiers took place in the disbursement of public funds. Risks and opportunities for conflict of interest are also greater where regional, district, and community powers exist in the same area, reducing transparency in areas of responsibilities and decision-making.

According to the World Bank Report, widespread corruption in regional and local administrations undermines efforts to promote local development, improve services and reduce rural poverty. It mirrors many of the issues that arise at the parliamentary and high

political levels of the central government administration. Local administrations tend to be highly politicized, with close links between political parties, elected councilors, and administrative staffs. Staff sizes have been rising since well before the territorial reform. In big cities, it has been reported that private citizens with public business need political support to schedule meetings with influential officials. The control rights that local governments exercise over zoning decisions, licenses and permits for economic activity, contracts for construction work, goods and services, property rent controls, and other distortions in setting tariffs, furnish ample opportunities to extract bribes and trade favors. These activities have an adverse impact on local revenues and expenditures, and also result in serious misallocation of resources, with consequent damage to the local economy and society.

Municipal ownership of large amounts of land and real estate aggravates the situation and adds to the opportunities and incentives for corrupt behavior. Conflict of interest linked to election funds is also a problem at the local level. Companies that refuse to cooperate may be excluded from the procurement process. The process of granting licenses and permits can easily be a source of conflict of interest. Most important are permits related to architecture, construction, land registration, land survey, and any other matters tied to municipal land and buildings.

Public procurement at the municipal level is notoriously corrupt. Misconduct stemming from conflict of interest includes contracts granted to companies owned by family relations of council members. Procurement abuses appear to be a particular problem when they involve construction projects, such as building bridges or office buildings. Conflict of interest in public contracts, whether during the bidding process or during contract execution, can also result in poor-quality construction and inadequate safety standards. The risks to public safety are even higher when even the inspection procedures are fraught with corruption.

3. INSTITUTIONS AND PROCEDURES PREVENTING AND DETECTING CONFLICT OF INTEREST

Formulating programs to combat conflict of interest in local government areas should be started with an investigation on where conflicts of interest can occur, and they should try to identify its source. Efforts to reduce conflict of interest have so far focused on attempts to introduce laws rather than to effect significant changes in practice. These efforts are commendable, but they have missed the broad middle ground in which local government elites actually operate, with a vested interest in resisting change. According to the World Bank's *Review of Priority Areas and Proposals for Action*, there is a need to strengthen the legislative framework with some specific, clearly defined pieces of legislation. However, the emphasis has tended to be too much on passing new laws rather than

effectively enforcing existing ones. As the World Bank reports, Poland has most of the instruments it needs but not yet enough will and capacity to use them well.⁷

3.1 Constitutional Basis Supporting Limitations of Conflict of Interest

The Polish Constitution established by Constitutional Act in 1997 is typical for modern, democratic states of civil society. Constitutional principles based on the general rule of law (art. 2) support conflict of interest limitations: lawfulness (art. 7), social justice (judicial fairness)—art. 2, proportionality (art. 31, art. 228), rule against bias (art. 153), openness and transparency (art. 61), equality before the law (art. 32), protection of legitimate trust and vested rights (art. 2), and the right to recover damages for public authorities' illegal activities (art. 77).

According to art. 153 paragraph 1 of the Constitution, a corps of civil servants shall operate the agencies of government administration in order to ensure a professional, efficient, impartial, and politically neutral discharge of state obligations. This rule strongly supports impartiality in the civil servant corps. Extension of this rule to public officials' corps at local governments is strongly needed as well.

Most important is the rule of equality (art. 32 paragraph 1 and 2), which states that all persons shall be equal before the law and all persons shall have the right to equal treatment by public authorities. For administrative bodies it means that when cases are essentially the same, their official treatment must be the same as well. When cases are objectively different, there will be corresponding differences in treatment.

These general, basic principles are applied in specific laws—substantive, procedural and internal laws, and they even influence extralegal regulations. In a legal analysis concerning conflict of interest, one has to point out that it is mostly about restrictions. Thus, it is very important to stress that effective restrictions have to be actually incorporated into law, (and not subject to interpretation); sanctions must be clearly defined (and not subject to interpretation); and an authority must be in charge to impose sanctions. It should be prohibited to use precedents in the application of the law.

3.2 Legal Rules Being Substantial Prerequisites of Conflict of Interest

3.2.1 Duplication of Power

This is a classic situation of conflict of interest being the consequence of the separation of powers: a public official occupying positions and carrying out activities at different public authorities simultaneously. Polish restrictions are categorical and strict in this matter. Prohibition on *post conjunction* (prohibiting the duplication of positions) is

provided by the Local-Self Government Acts, the Act on the Rules of Election to the Local Government Councils and the Act on Direct Mayoral Election.

The Local-Self Government Acts define the incompatibility between the posts of councilor and a member of Parliament or senator, office of voivode (governor⁸) or lieutenant governor of a region, or membership in other local government units.

Moreover, the specific laws provide that the mandate is equally incompatible with the posts of prosecutor, judge, a member of the Regional Accounting Chamber (RIO⁹), and a member of the Self-Government Board of Appeal (SKO¹⁰); occupying any of these positions would cause an obvious conflict of interest. Making clear the situation of compatibility of posts, Polish law provides the sanction for violating this rule, which is the loss of mandate.¹¹ The authority charged with implementing this sanction is the municipal/district/regional council.

Another legal framework regarding the duplication of posts is presented by the Local-Self Government Acts, pursuant to which a councilor may not simultaneously perform the function of a head or deputy head of municipal, district or regional (adequate) administrative unit, for example the position of principal or deputy principal of the municipal primary school, the director or deputy director of a district hospital, etc. The sanction is loss of mandate. The authority empowered to execute this sanction is the municipal/district/regional council.

Simultaneously, the Community Self-Government Act provides specific restrictions for mayors and deputy mayors. In accordance with the act, he/she may not be a mayor or deputy mayor in another community as well; his/her mandate may not be linked with membership in a local government unit, other than where he/she serves as mayor or deputy mayor; and he/she may not have employment in a governmental administration or have a mandate as a member of parliament or a senator. Violation of this rule entails the sanction of loss of mandate.¹² The authority empowered to impose this sanction is the municipal council.

The District Self-Government Act, as well as the Regional Self-Government Act, determine incompatibility between the mandate of a member of a district or regional executive board and membership in another local government unit, employment in government administration, or the post of member of Parliament and senator. If a member of the executive board is appointed by the council, the sanction is loss of mandate. The authority empowered to impose this sanction is the district/regional council. Unfortunately, there is no sanction for cases when a member of the executive board has been appointed by an entity other than the council.

3.2.2 Additional Employment

The additional employment restrictions are similar to those of duplication of power and concern the situation of councilors' employment in administrative institutions that

may cause an obvious conflict of interest. Regulations on public officials' additional employment are provided by Local Self Government Acts and the Act on the Rules of Election to the Local Government Councils.

The major issues concerning additional employment are covered by the Local Self Government Acts, according to which a councilor may not be an employee of the unit in which he/she obtained the mandate. It means that he/she cannot take part in constitutive authority activities (to be a member of the council also means to control the activities undertaken by the executive board), and, at the same time, be a local government employee (who is accountable to the executive body). Violation of the rule entails loss of mandate. The authority authorized to impose this sanction is the municipal/district/regional council. This restriction does not cover councilors appointed to be a member of an executive district/regional board. According to the law, they are employees of the local government units in which they have obtained the mandate.

There are additional prohibitions on hiring a councilor on the basis of a civil law contract that is linked to the mayor of a community, executive board of district or head of district executive board and executive board of region or the marshal. The sanction for the councilor is loss of mandate. The authority authorized to impose this sanction is the municipal council.

3.2.3 Economic Conflict of Interest

The concept of economic conflict of interest is interpreted broadly in this report. Some of the actual regulations are dealt with in the section on the use of local government property for personal purposes. Other limitations of the freedom to engage in economic activity appear in the Act on Reducing Opportunities to do Business for Persons Performing Public Functions. These rules concerning economic conflict of interest were mostly criticized as lacking mechanisms for monitoring and implementation. The change of law since January 1, 2003 should significantly improve the situation.

i) Involvement in Business Enterprises and Shareholding, Membership in Commercial or Charitable Organizations

Since January 1, 2003, the Local Self-Government Acts provide categorical restrictions for councilors, their spouses, and the spouses of: mayors, deputy mayors, executive district/regional board members, secretaries, and treasurers, directors of local government units and managers of local government legal persons. As can be seen, the Polish legal framework covers not only LG officials themselves, but also families of LG officials. This is a new regulation which significantly limits the rights of persons not directly engaged in performing public activities.

Persons covered in the law are prohibited from membership in managing, control and audit authorities and execution of commercial power of attorney in an economic entity or commercial law partnership with participation of municipal legal persons. The appointment is invalidated by law. Resignation from functions held before the commencement of the mandate or appointment is required within three months. Violation of these rules causes the sanction of loss of the managerial, controlling or auditing position by a councilor, his/her spouse or the spouses of persons mentioned.

The general restrictions on economic conflict of interest, especially for local government employees, are provided by the Act on Local Government Employees. The local government employee mustn't undertake activities that are in conflict with his duties and obligations or would cast suspicion on his partiality or self-interest.¹³ Additionally, since the beginning of 2003, every local government employee must submit to their employer information about their individual economic activities, as well as changes in these activities. The sanction for not submitting the declaration is disciplinary liability. The sanction for false declaration is criminal responsibility—imprisonment for up to three years.

A categorical legal framework for economic conflict of interest is presented by the Act on Reducing Opportunities to do Business for Persons Performing Public Functions. The restrictions provided by this act are supported by sanctions. Local government employees (senior officials and other local government employees—persons authorized to make administrative decisions on all three levels), the directors of local government units (for example primary communal school or district hospital) and managers of local government legal entities (for example waterworks) are prohibited from:

- membership in boards, supervisory boards, and audit committees of commercial law partnerships;
- employment and other engagement in commercial law partnerships if it may give rise to a suspicion of their partiality or self-interest;
- membership in boards, supervisory boards, and audit committees of co-operatives, with the exemption of supervisory boards of building societies;
- membership in boards of foundations that engage in economic activity;
- individual or joint economic activity, management, representation, and power of attorney in such activity, with the exemption of farm and livestock production at a family-run farm.¹⁴

These prohibitions are waived in the case of appointment to a commercial law partnership with participation of the State Treasury, other public legal persons, local government units, their associations or other legal persons of local government units as representatives of those entities, with a maximum of two such appointments.

A mayor is obliged to make a disclosure *on ceasing economic activity* in which he/she was involved before the election. A deputy mayor, a member of an executive board, a

secretary, a treasurer, a director of local government units, a manager of local government legal entities, or a person empowered to undertake administrative decisions is obliged to disclose information on how and when they ceased the economic activity (before, or on the day of taking office).

Mayors, deputy mayors, district/regional executive board members, treasurers and secretaries, other persons empowered to pass administrative decisions, the directors of the local government units, and managers of the local government legal entities *are prohibited from employment and any business involvement with a private enterprise if they participated in the passing of a decision affecting the pertinent enterprise's interests*, within a year after leaving office or relinquishing their post.¹⁵ This prohibition does not concern individual administrative decisions concerning local taxes (with the exception of reduction or exemption of taxes). The sanction for breaking these rules for a mayor or deputy mayor is loss of mandate; for others, dismissal.

The Local Self-Government Acts prohibit a councilor from possessing a package exceeding 10 percent of shares or stock in a commercial law partnerships with participation of municipal legal persons or economic entities in which such persons participate. Additionally, the disposal of surplus before the first session of the municipal board is required. The sanction: Preserved stock should not grant the due privileges of the right to vote, the right to dividend, the right to division of property, and the right to collection during the tenure of the mandate and within two years following its expiration. Additionally, the violation of these rules causes loss of mandate for councilors.

According to the Act on Reducing Opportunities to do Business for Persons Performing Public Functions—mayors, deputy mayors, district/region executive board members, treasurers (principal budget accountants) and secretaries, the directors of the local government units, the managers of the local government legal persons as well as other persons empowered to pass administrative decisions on all three levels are prohibited from the possession of more than 10 percent of shares or stock in commercial law partnerships, or shares or stock representing more than 10 percent of the initial capital in those partnerships. The sanction for mayor or deputy mayor for violating these rules is loss of mandate; for others, dismissal.

The violation of restrictions described above was quite frequent in Polish local governments. Until 2003, rulings without sanctions and a lack of authority to enforce any sanctions resulted in rules of *blank concept*, i.e., rules that did not work in real life. Local government employees—employed in the architecture department and empowered to issue building permits—were at the same time engaged in private economic activity; they were involved in construction projects for which building permits were required. At the same time, they did not have to declare their engagement in their own, or joint economic activities. Such activities clearly conflicted with public office and had many harmful consequences.

ii) *Acceptance of Gifts, Hospitality, and Sponsored Trips*

Polish regulations on the acceptance of gifts, hospitality, and sponsored trips are not clearly defined restrictions. In terms of local government officials, the Polish legislation contains some laconic statements, i.e., a municipal, district and regional councilor, a mayor, or a deputy mayor mustn't engage in certain economic activities or accept donations that would result in the loss of public confidence or harm their reputation as public officials. These articles also provide the prohibition of resorting to councilor's mandate in the course of permissible additional activities or economic activity. The sanction for councilors, mayors, and deputy mayors is loss of mandate. The authority empowered to impose this sanction is the municipal/district/regional council. Pertinent regulations in this respect are furnished by the Act on Community-Self Government.

Since January 1, 2003, the pertinent regulation in effect stipulates that a mayor, his deputy, a district/regional executive board member, secretary, treasurer, director of the local government unit, local government legal entity manager, and other persons empowered to pass administrative decisions while performing their official duties, during the entire period of their mandate and for a period of three years after that, cannot accept any free gifts or benefits or accept something in exchange of payment of less than its market value, from any person he is the supervisor of, or who may be affected by any decision he makes in his official duties.

However difficult it is to distinguish a gift from a bribe, the provisions on accepting gifts are established by the Local Self-Government Acts; while cases of bribery are regulated by the Criminal Code. The practice of giving and accepting gifts is quite popular in Poland, and it takes different forms: money, alcohol, trips to foreign countries (in 2002, members of the Regional Health Office in Bialystok were offered and accepted a sponsored trip to the Republic of South Africa by a pharmacy company), dinners in restaurants, and so on.

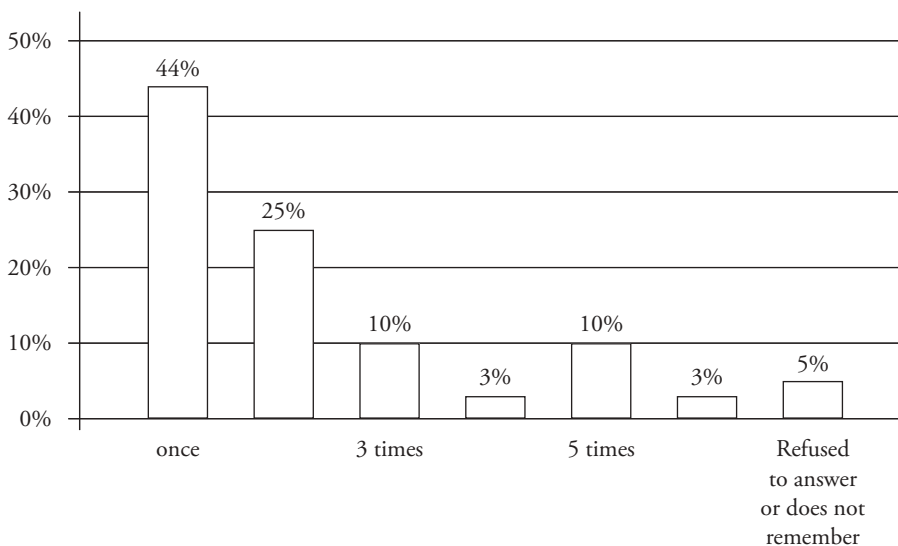
According to the Report on the Survey on Corruption in Everyday Experience (Kubiak, p.19) among respondents who admitted having given gifts within the last three-four years, the majority (51 percent) had done it more than once. Figure 4.2 illustrates the number of cases of giving gifts.

As the report points out:

“...less than half of the respondents had given gifts only once; but as a rule, people who participated in bribery did it more than once. Some participants (in only a few cases) described eight, 10 and even 20 cases of giving bribes/gifts—a record. The most frequent reason for giving bribes, according to the respondents (42 percent) is a sense of coercion. In their opinion, bribery was the only way of taking care of business. For more than half of the respondents (51 percent), “practical” considerations were decisive—raising the efficiency of their action. For

20 percent of respondents time was the most important factor. Thanks to a bribe, official business received faster handling. Greater accuracy or reliability in handling a matter was mentioned in 17 percent of the cases; in 14 percent of the cases a bribe made it possible to take care of something at a smaller cost. Other reasons—apart from “efficiency-related” or “practical” considerations—that were decisive in giving a bribe included the desire to show gratitude, preserve health, or avoid a more expensive fine or penalty (4 percent). In 3 percent of the cases respondents refused to give the reasons why they had decided to give a bribe. Bribes are obviously considered a strategy to make life easier.

Figure 4.2
Frequency of Giving Bribes/Gifts (N = 224)



Source: A. Kubiak, Batory Foundation: *Corruption in Everyday Experience*, 2001, www.batory.org.pl.

Above all, gifts were given in the form of money (77 percent of cases). Material gifts (17 percent) included primarily alcohol—the “cognac for the doctor” routine—but there have also been automobile covers and tennis rackets. The declared worth of bribes shows we are dealing with corruption of modest financial dimensions. This is illustrated by the list of paid bribes by their value as shown in Table 4.6.

Table 4.6
Delivered Bribes by Their Worth

Value of Gift	Number of Cases	Proportion in Group of Cases of Giving Bribes (N=224)
under €25	51	23
€25	33	15
over €25, under €125	37	16
€125	20	9
over €125	24	11
replies <i>hard to say, I don't remember</i>	18	8
refused to answer	42	18

Source: Kubiak, A.

It was value that distinguished a bribe from a gift as an expression of gratitude. The majority of respondents (45 percent) feel that the value is the decisive criterion in determining a bribe. At the same time, 40 percent do not share this view, and 15 percent are unable to give an explicit answer.

3.3.4 Conflict of Interest in Personal Relations

Conflict of interest may also appear in a situation when close relatives are employed in the same office belonging to the same hierarchy. Rules eliminating the potential conflict between a public official and their relatives (limitation of relatives' employment) are provided by the Act on Local Government Employees.

It is prohibited to employ close relatives (spouses, ascendants, descendants, siblings, kin, adopted family, or guardians) in positions which involve a hierarchical relationship. Polish regulations do not provide clear sanctions to prevent this, or assign authorities charged to enforce this rule. This is another *blank concept* regulation. Moreover, it is common in Polish public administration offices that close relatives work in the same unit, with one of them being the other's supervisor.

3.3.5 Using Official Information for Personal Gain

Generally, Polish regulations do not provide restrictions on using official information for personal gain. However, in the Act on Local Government Employees and the Law on Protection of Undisclosed Information, there are regulations on handling

confidential information, but they do not apply in the case of information that is not specifically labeled confidential. For example, for buying municipal properties (land, buildings, etc.) it is necessary to know that these properties are put up for sale. In this situation, the rule of “who gets there first” is very valuable. That is why it is common practice that councilors, local government employees, and their families and friends buy municipal real estate at a very advantageous price.

The first of the above-mentioned acts stipulates that a local government employee’s primary obligation is to the state, and information acquired in public office should be kept confidential. There are no sanctions for the violation of this rule, nor an authority to enforce it.

Art. 2 of the Act on Securing Secret Information states that local government authorities are obliged to preserve the confidentiality of official information. This act provides a special control system to ensure the confidentiality of secret information.

As far as local government officials are concerned, there are no specific provisions concerning this matter. There is a significant lack of regulation proscribing the use of official information for purposes other than professional and no regulation that a public official can make use of information only when that information is available to the general public. Such regulation could serve as a means to prevent profiting from information that only an official has had access to while performing his or her official duties.

According to the Polish Criminal Code, disclosure or use of confidential information by a public official while performing his or her duties is a crime. Sanctions include a fine or imprisonment of up to two years.

3.3.6 Using Local Government Property

The Local Self-Government Acts provide specific prohibitions for councilors and district/regional executive board members on using communal/district/regional property in individual or joint economic activity.¹⁶ This rule does not apply to mayors, deputy mayors and local government employees, but their rights are limited further than those of councilors: They aren’t allowed to perform any economic activity at all, as was mentioned before. If a councilor runs an economic activity before he/she gets the mandate, he/she is obliged to stop that economic activity within three months from the date of swearing in. Non-compliance is grounds for loss of mandate.

Civil law (family) relations are prohibited within local government authorities or local government units in cases affecting the property of a regional councilor or regional executive board member, with the exception of services publicly available on general principles, real estate rental for personal housing purposes or individual economic activity and lease, and other forms of real estate use, if rental, tenancy or lease are based on general rules.¹⁷ This restriction concerns only regional councilors and executive board

members and offers no mechanisms to control civil law relations mentioned above. It seems that such a mechanism (restrictions coupled with efficient disclosure tools) is also needed at the community and district level.

But there are no other regulations concerning the use of public (local government) properties (buildings, cars, printers, copiers, etc.) for personal purposes. Even though the Act on Local Government Employees defines public officials' obligation in public service, there are no clear sanctions for noncompliance, and no authority is named to enforce the law. This aspect of conflict of interest is an evident weak point in the Polish legislation.

Use of public property for personal gain takes place with the public's consent; a characteristic of post-communist societies is limited public awareness of the fact that public property belongs to no individuals. This mentality and common practice results in the evident waste of public money.

The law prohibits councilors of municipal/district and regional governments to enter into contractual agreements with the city/district/region or do business with the council's assets. Nevertheless, the World Bank reports that

“approximately half of the Warsaw councilors or members of their families were reportedly involved in business using municipally owned land and shops” (World Bank, 1999).

According to the World Bank report, many self-governments own large amounts of land and real estate. This gives local administrations significant leverage over urban development, business opportunities, and kickbacks. There appears to be a strong correlation between improvements that raise land values and the location of residences of city officials. In addition, there are reportedly many cases of council members or their spouses renting from the council, often at low rents set in 1990/91 (some rents are not indexed at all, some are indexed but remain below market levels). The owner of the lease then sub-leases the property illegally at market prices, thereby making a profit. Other cases involve the creation of special conditions for sale, so that a piece of land or real estate can be sold only to those now leasing or only at a predetermined price, or transactions are completed on the day of the announcement, so only those in the know can participate. The result is below-market returns on public assets and high profit for well-placed private interests. Revenues from public assets are further reduced when rents for stores and buildings owned by the municipality go into the pocket of the municipal manager rather than into municipal revenues.

Corruption in the allocation of apartments is also a problem. Leverage over people who are anxious to keep their apartments and their jobs, and who do not see alternatives, adds to the power of local administrations. In addition, some apartments are set aside to be allocated as a personal gift from the mayor. Investigations indicate that these apartments are not always used to help the poor or the needy.

The Polish Supreme Auditing Chamber (NIK) disclosed obvious cases of conflict of interest in controlled local government units.¹⁸ Among others, the NIK described cases when local councilors use municipal property (for individual economic activity such as infirmaries,) at below-market prices or sell municipal property to councilors or other local government employees without proper public procurement procedures.

Using public properties for personal purposes is common in the health care system and can be easily identified. Informal payments, ranging from small gifts *ex post* to poorly-paid officials, to “speed money” for better, faster treatment, to extortion of large bribes on an informally established rate scale for surgery and other treatments, is the second form of conflict of interest. The large scale of the problem indicates that conflict of interest introduces adverse incentives in the health care system, distorts priorities, limits access, and compromises efforts to improve efficiency, accountability and equity. It is impossible to assess the actual cost of damage in health care. Many cases have been reported of medical personnel using public hospital facilities to deliver paid medical services. To some extent, the prevalence of this practice can be related to the extremely low pay in the health sector, but many of the beneficiaries have high incomes. There are indications that the practice has exceeded the scale of compensation for low pay and become predatory. Pressure to eliminate conflict of interest can be expected to rise as people become unwilling—and/or unable—to pay both their mandatory health care contribution and informal payments, but it will take more than public pressure to solve this problem.

3.3.7 Limitations in Salaries

For almost 10 years, since the system of local governments appeared (1990), Poland has faced an unregulated and rather unlimited increase of public officials’ salaries, both at the central and local levels. Positions that used to carry moral value and had often been unpaid became well-paid and secure jobs. Thus, positions in local self-government have become lucrative and coveted jobs, where one can not only earn a good salary but also have the opportunity to earn additional income illegally. Due to public outrage and media attention, the Polish Parliament decided to stop the system of unregulated increases in local government officials’ salaries.

Thus, on the basis agreed by the councils, a councilor receives per diems, as well as travel cost reimbursement.¹⁹ The monthly per diem of a councilor cannot exceed 150 percent of the base amount specified in the budget law for persons in executive public offices and can be lowered by an executive order of the Council of Ministers on account of a smaller number of inhabitants in a particular constituency.²⁰ A district councilor or regional councilor who is a paid member of the executive board is prohibited from receiving per diem payments.²¹

Local government employees obtain a salary corresponding to their qualifications and professional responsibilities. The amount is specified by an executive order of the Council of Ministers. The monthly salary of a mayor, deputy mayor, or a member of the district/regional executive board can amount to a maximum of seven times the base amount specified in the budget law for persons in executive public positions.

3.3.8 Involvement in Political Party Activities

From a professional point of view, local self-government in Poland seems to be highly politicized. All strategically influential positions with decision-making authority are occupied by elected politicians. That is why it is impossible to avoid political pressure on the decision-making process, a situation that provokes a conflict between private, political, and public interests.

Local government public officials comprise two groups: Some of them are politicians (councilors and senior officials), while others are professional staff (local government employees). As a rule, politicians are characterized by a high level of professional insecurity, since their position is tied to the four-year term of office. Local government employees usually are hired based on stable labor regulations. Ordinarily they keep their jobs even when the term of office for councils and executive boards ends. That is why they form a rather permanent staff. It is important to emphasize that local government employees are usually subordinated to senior officials in the hierarchy.

Contrary to the Polish Civil Service Act, the Polish legal framework on local self-government does not forbid local government officials from manifesting their political convictions or from being members of a political party. However, the Act on Local Government Employees stipulates it is the general obligation of an employee in local government to perform his official duties without any political bias. Of course the situation is the result of a dangerous shortcoming in the Polish legal system, and it provides opportunities for conflict of interest.

3.3.9 Transparency

It is generally recognized that a democratic system can function more effectively when the public is fully informed about issues of public life since being informed is a prerequisite for acceptance, participation, and compliance. It is thus necessary that the public have, subject to unavoidable exceptions and limitations, access to the large number of records and information of general interest and importance that administrative authorities maintain at all tiers. According to the Constitutional provision of art. 61 paragraph 1 (on transparency and openness), a citizen must have the right to obtain information on

the activities of organs of public authority as well as persons performing a public office. Such right must also include access to information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform their official duties and manage community assets or state property.

The right to obtain information must ensure access to documents and admission to meetings of collective organs of public authority established by universal elections, with the opportunity to make sound and visual recordings. Limitations may be imposed by statute solely to protect liberties and rights of other persons and economic subjects, public order, security or important economic interests of the state.²²

The constitutional rule of transparency (openness) is the foundation for the prevention of conflict of interest. A citizen generally has the “right to know.” Without having to show any specific interest, everyone is entitled upon request²³ to access public information (by effective and appropriate means), to enter council and committee sessions, and to access documents associated with the performance of public duties, within a reasonable time.²⁴

One does not have to be a participant in any administrative procedure as a prerequisite for the right to request information from administrative authorities. The administrative authorities should supply information as soon as it is possible by effective and appropriate means. These means may consist of oral or written information, allowing inspection of documents and files, etc. The fact that the administrative authorities charge a fee for a request or recover the cost of providing requested information (copying, printing, mailing, etc.) is compatible with the principle of transparency.²⁵ Access to information may only be subject to limitations that are necessary in a democratic society for the protection of legitimate public interests, privacy, and other legitimate private interests.²⁶ Where access to information is refused, the administrative authorities must give a statement of reasons, and the refusal is subject to review (due to the administrative procedure).²⁷

Additionally, the Code of Administrative Proceedings provides the general rule (art. 9) that a participant of administrative procedures must be informed by administrative organs about his/her rights and obligations within the administrative procedure.

According to current regulations, access by the press, civic organizations, etc., to information on public finance and management can be easily limited. The constitution guarantees the right to information on government performance. However, there are specific acts that allow for severe restriction of that right. Examples include:

- 1) The Criminal Code extends greater protection from libel to politicians and public figures (public officials) than to regular citizens; this is a direct violation of the rulings (also referring to Poland) of the Strasbourg Human Rights Tribunal.
- 2) The Law on Protection of Undisclosed Information allows directors of public institutions to decide what kind of information constitutes a “professional

secret” and there is no appeal to reverse that decision. In 2000, in a famous case, the council of a small town (Losice) barred access to a protocol of a supervisory commission meeting, thus making information on how the town allocates public money “confidential.” When the press turned to the Supreme Administrative Court, it ruled that the council had not violated the law.

- 3) The Law on Protection of Personal Data provides tools that can limit access to information about certain politicians, e.g., candidates to local governments, if they do not agree to disclose it (whether they belonged to political parties or have been convicted, for example).
- 4) The Law on Public Procurement also includes vague provisions that can serve to block access to information.
- 5) The Local Government Acts provide that the specific rules and mode of access to public information be regulated by internal regulations (statutes of communities, districts and regions). Unfortunately, these internal procedures vary a great deal, but even worse, a number of internal statutes limit citizens’ constitutional right to access to information. Internal (local) statutes provide, for example, that the community council can exclude the public from council meetings (i.e., Bytom city, Grojec district, Biala community). There are cases when internal regulations provide that the citizens can access public information only on Mondays (as in Wysokie Mazowieckie district).

4. PROCEDURAL INSTRUMENTS PREVENTING CONFLICT OF INTEREST

4.1 Declaration of Income and Property

All local government public officials (except for professional local government employees) *are obliged to make a disclosure on income and property*.²⁸ This disclosure covers their separate estate and joint property of spouses (with the exception of a particular spouse’s property). The declaration includes information about:

- funds, real estate, shares in commercial companies and the purchase of property from the Treasury or from other state legal entity, local government units or their associations or from local government legal entities (the property that was purchased by vendees); information on any business activity and positions at private companies;
- income received from employment or from other commercial activity or occupation stemming from the sources mentioned above;

- personal property with a value exceeding PLN 10,000 (about €2,500);
- pecuniary obligations with a value exceeding PLN 10,000 (about €2,500), including debts and loans as well as contractual obligations.

The disclosure of income and property, along with a copy of the declaration on income in the preceding tax year and its correction, have to be supplied in two copies.

Councilors and mayors have to file the disclosure within 30 days of taking office. The following declarations of income and property have to be supplied by a councilor or a mayor, annually by April 30th concerning the preceding year, and two months before the end of their term.

A deputy mayor, a member of an executive board, a secretary, a treasurer, a director of a local government unit, a manager of a local government legal entity, and a person authorized to make administrative decisions file their first declaration within 30 days of taking office or the first day of employment. Subsequent declarations must be filed by April 30 every year, and on the last day of their term or employment.

The data in the declaration is checked by the authority where the declaration was filed, and it is also sent to the local office of the State Treasury, which does a similar check. The analysis of the declaration the treasurer's office also takes into account the income earned by the spouse of the official in the preceding tax year. The analysis may compare the figures of the declaration and the attached copy of the deposition on the income earned in a given tax year to previous declarations of income and property with the attached copies of the depositions on the amount of income earned in a tax year.

If there is a suspicion that the declaration contains incorrect or outright false information, the official in charge of checking the declaration can request an audit from the director of the fiscal inspection office. If the request is refused, the case can be appealed to the general inspector of fiscal inspection.

The official in charge of checking the declarations has to make a report to the adequate community/district or regional council by October 30, listing people who did not file a declaration or filed after the deadline; and outlining any incorrect information contained in the declaration, with detailed explanations.

The information included in the declaration on income and property is public, excluding private data, such as the filer's home address and the location of his/her property.

The law on reducing opportunities for public officials to engage in business activities established a Register of Benefits. Mayors, deputy mayors, members of executive district/regional boards, secretaries, and treasurers, and their spouses, must submit information on all earnings defined as stemming from all positions and activities subject to remuneration (both in public administration and in private institutions); from work carried out independently, sponsorship of public activities of the functionary, gifts and travel

unrelated to public office; all gifts exceeding 50 percent of the minimum monthly wage; and all other benefits exceeding the same value. The register is public and is maintained by the State Election Commission.

The 1999 World Bank Report stated that:

“Nepotism, cronyism and the conflict of interest would be less pervasive if efficient mechanisms of control existed.” (World Bank, 1999)

Since the beginning of 2003, it seems that Polish anticorruption laws are equipped with such mechanisms. Time will tell.

A completely new regulation says that local government public officials (except for professional local government employees) *are obliged to file a declaration on economic activities by their close relations* (spouses, parents, children and siblings), if the work is performed on the local government level where the person who is obliged to file the declaration is employed. They must also file a declaration on civil contracts between their close relations and any community/district/regional bodies, local government units or their legal representatives, except for contracts that do not concern legal relationships resulting from the utilization of freely available services or from legal relationships based on general conditions.

The local government official (apart from professional local government employees) whose close family member is employed by the local government unit or started working for a commercial company in which at least 50 percent of shares is owned by local government units during the official's term, is obliged to include this information in the declaration of income and property. The obligation of disclosure also applies to a spouse, parent, child or sibling.

If the declaration is not filed on time, the law provides for strict sanctions, such as lost per diem (for councilors), loss of salary (for a mayor, head of the district executive board, or marshal), recall from office (for a secretary or treasurer), dissolving an employment contract (for a deputy mayor, a member of an executive board, a director of local government unit, a manager of a local government legal entity, or a person authorized to make administrative decisions). Additionally, supplying false information or concealing the truth results in criminal liability, punishable by imprisonment of up to three years.

Until January 1, 2003, that issue was poorly regulated. Public officials (local government employees) themselves were not allowed to own private businesses or to be employed in the private sector. And only the highest public officials (central government officials) were obliged to disclose their spouse's business activities. Unfortunately, this requirement did not apply to local public officials, which left a lot of room for corruption, particularly at the local level. Even in the case of those who are obliged to disclose the business activities of their spouse, the mechanism of control was really weak. The effectiveness of the newly passed laws is difficult to assess, but at least the mechanism for disclosure of potentially corrupt circumstances has finally been established.

4.2 Rules on Withdrawal

One of the most important procedures to provide for the prevention of conflict of interest is the institution of the decision-maker's withdrawal or recall, established in the Polish Code of Administrative Proceedings and the Local Self-Government Acts.

4.2.1 Withdrawal in Individual Cases

In many situations government agencies have to choose among several applicants or impose positive or negative duties on individuals. The Polish Code of Administrative Proceedings (C.A.P.), issued on June 14, 1960, and still in effect, provides the option of excluding any candidate whose impartiality is questionable, assuring the avoidance of conflict of interest as much as possible. C.A.P. indicates three kinds of exclusion: suspension of an administrative authority employee, an administrating body, or a member of collective body (art. 24, 25). Suspension means that the employee (administrating body or member of a collective body) must abstain from any actions except those of utmost urgency in the public interest or the paramount interest of the party.

According to the regulations, an official or a member of a collective body is subject to suspension in cases where:

- a legal relationship exists between the official and a party in the case such that the official's rights or duties may be influenced;
- one party is a spouse, while the causes of suspension persist after termination of marriage, his/her relatives and relations up to the second degree;
- one party in the case is a person related by adoption, custody and guardianship, while the causes of suspension persist after dissolution of adoptive relationship, custody and guardianship;
- if the official was or still is a representative of one of the parties, or if the representative was a spouse, close family member or someone related up to the second degree or someone related by adoption, custody and guardianship;
- if one of the parties is a person in a supervisory position.

According to the C.A.P., the official or a member of a collective body in local government should withdraw from participation in a case if he/she has an interest in the case; was a witness or an expert in the case; took part in the appeal of a decision at a lower level; or if there has been an official, disciplinary, or criminal investigation against the official.

The list of reasons for suspension contained in the C.A.P. is incomplete. The existence of other factual or legal circumstances casting doubt on someone's personal impartiality is highly possible. Therefore, as the finding of a condition specified in C.A.P. is the

essential reason for the official's suspension, it is unnecessary to point out an apparent bias of the person deciding a case. There exists another kind of suspension that calls for the substantiation of certain circumstances that can cause doubts of neutrality. It does not necessitate the substantiation of specifics concerning possible bias if there is even a hint of impartiality. There is no need to prove that the official acts with bias if his neutrality can be questioned. The assessment of the circumstances is done by the direct superior of the official, but its discretion is limited to demonstrating the possibility of bias. The characteristic of the occurrences can range from the private sphere to professional activities.

The C.A.P. can also require the withdrawal of a public administration agency from the settlement of a case. This means that the agency is not eligible to make the administrative decision in the case, in other words it is unable to undertake any procedural activities in the case. The withdrawal of an administrative agency equally binds both collective and single-person agencies. The only exception occurs when the situation is related to the proprietary interests of:

- the director of the agency or his/her spouse; while the causes for suspension persist after termination of marriage, his/her relatives and relations by affinity up to the second degree, as well as a person related by adoption, custody and guardianship—in these instances the case is settled by an agency at the next higher level;
- the person at the managerial position in the supervising agency or that person's spouse, relation by adoption, custody and guardianship; such cases are settled by the supervising agency on the next higher level.

The regulations on withdrawal from a case do not list among the conditions cases when one of the participants in the decision-making process is a councilor of the self-governmental unit, and the case is under the direct authority of the unit.

There is no doubt that there are a number of possibilities for collusion between the official of the self-governmental agency and the councilor.²⁹ As for the executive board, the council has the authority to implement the board's dismissal. The interdependence of authorized agencies to establish the units of self-government and the executive agencies is mentioned in most of the statutory regulations. The executive organs of the communities (mayors) or the executive boards of the districts and regions carry out the resolutions of the councils,³⁰ prepare the drafts of council's resolutions,³¹ and implement them.³² The legal act on *Community Self-Government* stipulates that, in the accomplishment of the specific municipal tasks, the mayor is accountable exclusively to the council.³³

Except for the organizational dependence resulting from the structure, tasks and functions of decision-making and executive agencies in the self-governmental units, there are various forms of interdependence among the members of the bodies. I consider, for

example, the reliance on friendship, political party or politics as such. It is worth noting that the decision-making and executive organs of the self-governmental units—typically characterized by political loyalties—are composed of elected officials along with the so-called “key figure.” That means that, while council members are directly elected by the voters, the official who assembles the executive district/regional board is selected by the political majority of the council. The issue of loyalty, or the lack of it, has apparently nothing to do with professional qualifications. If a participant in a given decision is a councilor who has a vested family or political interest in the case (they are politically dependant on a board member, the chairperson of the board, or an appointed official), and the matter is decided along political loyalties influencing objective, impartial conduct, the institution of withdrawal (or abstention) is called for.

In every council, regardless of its size, different relations exist between the councilors and the executive organs (directly) and the employees of the agency (indirectly). It may be presumed that such relations (friendly or political), may actually or possibly influence impartiality. The solution calls for the obligatory application of official withdrawal of the self-governmental agency (and as the result the abstention of the agency) in cases, where the party is the councilor of the self-governmental unit or the person related to him/her.

The institution of withdrawal is very useful for the prevention of conflict of interest. Nevertheless, there remains a lack of mechanisms to implement and monitor the effectiveness and efficiency of this provision. That is why the institution of withdrawal is almost unused in Polish local government.

4.2.2 Collegiate Organ Resolutions

The Polish Local Self-Government Act contains a provision prohibiting councilors or executive board members from voting at council, board, or commission sessions where such matters are decided that pertain to the person’s personal legal interest.³⁴ This regulation does not specify tools for implementation and monitoring.

4.3 Limitations on Public Procurement

The law that was specifically adopted in order to regulate procurement is the Public Procurement Act. It established the Public Procurement Office (PPO) and introduced mandatory tenders for most public purchases, restrictions on membership in purchaser’s bidding commissions, and a procedure of appeals for the vendors disagreeing with the purchaser’s contracting decision.

To ensure honest and impartial public procurement procedures, the Act on Public Procurement provides the institution of withdrawal from the public procurement procedure. A person cannot represent a procuring entity, perform other activities related to procurement proceedings, or be a consultant in procurement proceedings if such a person:

- is married to, directly or indirectly related to the second degree, or is related by adoption, or guardianship with the bidder, the bidder's legal proxy or members of the governing bodies of a legal person competing for the procurement;
- worked in the last three years as an employee or a contractor for the bidder or has been a member of the governing bodies of legal persons competing for the procurement;
- is in such a legal or factual relationship with a supplier or contractor competing for the procurement as to give rise to doubts regarding his impartiality.

Persons acting on behalf of the procuring entity in public procurement proceedings shall submit declarations in writing of the existence, (or the lack) of circumstances spelled out in this article.

The existence of the circumstances influencing partiality shall result in the exclusion of a given person from the public procurement proceedings. The violation of the above-mentioned restrictions draws consequences defined by the Labor Code.³⁵ However, persistent and frequently unpunished misconduct proves that the law on Public Procurement is not properly implemented. No monitoring of the assets or lifestyles of persons performing public procurement takes place, nor do any codes of ethics exist.

The cases revealed by the press as well as opinion polls and statistics indicate problems. Most of them demonstrate that the primary goal of the Public Procurement Act, namely the establishment of an effective procedure, has not been achieved. Those companies that do turn to the PPO most often charge the procuring agency of selecting a vendor not based on criteria published in the announcement of the tender (unjustified or arbitrary rejection of offers)—and of changing the criteria after the bidding process has started.³⁶

The allegation that a procurer sets the criteria for bidding to favor one particular bidder comes up frequently in surveys but not in legal action, because it is very difficult to prove—particularly since the offers are secret and the vendors only get to know the prices proposed by their competitors. This kind of criteria-manipulation occurs particularly at the local level, where supervision is less stringent and personal bonds among people working for different companies and institutions are stronger.

Significant abuses occur before the tender is announced, such as bribes to ensure early access to information on technical requirements, specifications, and other criteria crucial to the point system used in the decisions. Conditions for winning a bid can be set in such a way as to favor one particular bidder, and conditions are sometimes

subject to change after bidding has started. Procurement abuses are also made possible by weak bidding documents and poor evaluation practices. Characteristics (such as financial standing) that should be used to include or exclude firms from the bidding process altogether are instead used as part of the evaluation—and are slanted in numerous ways to favor a predetermined winner. For example, the successful bidder can be defined by a requirement of profitability of precisely 12 percent (World Bank, 1999).

Various other techniques used to bypass proper public procurement methods include the attachment of large additional contracts to the contract of the winning bidder after an initial bid for a small contract has been won. In some cases, other bidders are informed of the lowest bid so that they can adjust their prices and inducements accordingly. Winning firms can also be allowed to negotiate the tender price upwards after the contract has been awarded. Access to confidential information in advance appears to be the key feature of these abuses. Collusion among bidders (for example non-competition agreements between firms that dominate the market) also serves to raise prices and subvert the procurement process.

In the local government units financial control (from December 2001) the Supreme Auditing Chamber (NIK) disclosed common examples (43 cases in 89 controlled units) of selling municipal property to councilors and local government employees with an obvious violation of the public procurement procedures or even without public procurement procedures. A 1999 audit of school renovations performed by communities found that, in 16 out of 94 schools, audited procedures mandated by the procurement law were not applied at all, and in most of the rest of them numerous improprieties were found.³⁷

4.4 Conflict of Interest Rules in the Field of Privatization

Widespread nepotism, cronyism, and other forms of conflict of interest are the main problem in appointments to privatization commissions and selection committees. As the World Bank reports, it appears that some public officials' representatives and their proxies are appointed in order to ensure a particular outcome of the privatization process, channeling funds to particular individuals or political parties, thereby contributing to a complex web of traded favors, and/or manipulating prices downward.

For example, the Supreme Auditing Chamber (NIK) estimates that the state lost at least PLN 85 million in the privatization of the "Centrum" department store complex in Warsaw.³⁸

This situation thrives on the lack of transparency concerning appointment criteria, qualifications for membership of committees, and members' connections and interests.

The process of privatization on the local level mainly concerns three aspects:

- the privatization of communal legal entities, owned or managed by the local government;
- the privatization of communal services;
- the privatization of municipal property.

According to the report by the Minister of the Treasury, at the beginning of the privatization process, communities had no knowledge, skills or understanding of the complex concept of effective and efficient municipal economy reforms.³⁹ For example, self-governments' attitudes to privatization of health assets vary widely. According to the World Bank Report, some wish to hold on to assets blindly, rather than consider rationalization; others wish to privatize them in an ill-considered way. Although Poland supports private sector primary care, hospitals raise more difficult issues, and reasonable fears have been expressed about "wild privatization" in the absence of a strong regulatory framework, effective monitoring capacity, and provisions to ensure access for the poor. Cases have been reported of hospital management (hospitals are owned by districts or regions) deliberately bankrupting hospitals so the assets can be sold cheaply to management or their proxies. The Health Insurance Supervisory Office will need to develop the capacity to detect and prevent such abuses and help identify cases when hospitals should be closed or can be privatized without detrimental consequences on public care.

4.5 Restrictions on Political Donations

According to the Act on Reducing Opportunities to Do Business for Persons Performing Public Functions, mayors, heads of district executive boards, and marshals (and their spouses) must disclose all information about performing paid activities and public (including political) activities, as well as any form of financial support, in the Profits' Register. The Register is open to the public. Additionally, the Act on Political Parties provides that financial contribution for political parties' can only come from individuals. Political party activities mustn't be sponsored by legal entities.

Even though regulations prohibit companies from financially supporting political party activities, corruption linked to election funds still exists, presenting a problem at the local level. According to the World Bank Report, companies that refuse to comply may be excluded from the procurement process.⁴⁰ In bigger cities, there is strong pressure from potential investors, including foreign investors, who can afford to pay substantial party donations. In smaller cities and at village level, there is a risk that the local elite develops a network that controls the town and influences bank loans and other decisions affecting both businesses and private individuals.

5. LEGAL INSTRUMENTS PROVIDING RESPONSIBILITY FOR ACTIVITIES CAUSING CONFLICT OF INTEREST

There is no special legal framework either to encourage whistle blowing by local government employees or to protect whistleblowers. However, local government employees who are given an order that requires the violation of the law or the waste of resources may request the order in writing and then refuse to carry it out.

Supervision of the local government administration is implemented primarily by central administrative organs or accountable to the main administrative authority (internal control) and, secondarily, by organs independent from the administration (external control). Within this first group, the Self-Government Board of Appeal (SKO), the governor (*voivode*), the Regional Accounting Chambers (RIO), and the prime minister, are worth mentioning.

5.1 Internal Control Supporting the Prevention of Conflict of Interest

The internal supervisory regulations concerning conflict of interest prevention consist of the procedure for appeal of individual administrative decisions (regulated by the C.A.P) and other control instruments. The Local Self-Government Acts state that the prime minister, the governor and the Regional Accounting Chambers supervise local government activities on the basis of the rule of lawfulness.⁴¹ At the same time, they are limited by this rule.

The governor plays the important role of supervising the loss of mandate, or the decision-making of the councils, in accordance with the amended Local Self-Government Acts.

The Regional Accounting Chambers supervise the financial condition of the commune, district, and region and are accountable to the prime minister. The law regarding the RIO was issued on October 7, 1992. Supervising these Regional Accounting Chambers, the Supreme Auditing Chamber (NIK) stated that RIO's provided paid courses for public officials in local government that were normally supervised by the RIO. Usually the Regional Audit Chamber is the institution in charge of auditing and supervising the finances of local governments. But in this controversial case, the auditing institution obtained the financial means from the institution whose finances are the subject of its supervision. Such activities could provoke a suspicion of bias and of not adequately meeting obligations.⁴²

Within the first group of supervision, it is necessary to mention the public prosecutors as well. They can also determine whether a decision issued by the local government

authority is in accordance with the law. Potential or existing conflict of interest is usually not the subject of the audit. The prosecutors practically play no role in detecting and preventing conflict of interest.

5.2 External Control Supporting the Prevention of Conflict of Interest

5.2.1 Supreme Auditing Chamber

The second supervisory agency, the Supreme Auditing Chamber (NIK) is particularly noteworthy. Established in 1949, initially it was accountable to the government, but since 1980 the Chamber has been accountable only to Parliament (Sejm). The NIK is subordinate to Parliament (Sejm), but the Constitution grants the Supreme Auditing Chamber independence and institutional separation from other state organs. The Supreme Auditing Chamber undertakes audits on its own initiative, by the order of the Sejm or its bodies, or at the request of the president of Poland or the prime minister.

According to the Constitution, the Supreme Auditing Chamber is also allowed to audit the activity of organs of local self-government, communal legal persons, other communal organizational units (regarding legality, economic prudence and diligence), and other organizational units and economic subjects (regarding legality and economic prudence) to the extent to which they use state or communal property or resources or satisfy financial obligations towards the state. The Supreme Auditing Chamber carries out financial and performance audits. The main areas of audit include public finance, management of public property and anti-corruption activity. One of the seven priorities of the NIK for the period 2000–2002 was the auditing of anticorruption activities implemented by different bodies. The Supreme Auditing Chamber plays the most important role in detecting and disclosing conflict of interest, and it reports on the activities that are in conflict with the law (several statements of the NIK were presented in this analysis). However, it cannot influence illegal activities by local government authorities, it can only refer the cases to the public prosecutor.

5.2.2 Ombudsman

The role of the Ombudsman must also be emphasized. The institution has existed in Poland since November 1987 and was established by the law of July 15, 1987. The Ombudsman protects the rights and liberties of citizens; he is not dependent on any governing body but responsible only to Parliament (Sejm). When the Ombudsman finds that a law has been broken he/she can apply to the organs of inspection or prosecution.

He can appeal to the Sejm requesting that the Supreme Audit Chamber carry out an inspection, and he may also lead the inspection himself. The Ombudsman is entitled to inspect any authority. His main role within the administrative procedure is to take administrative action and judicial review against administrative decisions. He can also make statements about acts of administrative organs and direct them to the supervisory body. These statements also include disciplinary cases. The organs are obliged to co-operate with the Ombudsman and notify him about all amendments they have made on the Ombudsman's request.

The legal system of supervision is established: There are different supervisory institutions in charge of monitoring the activities of local government authorities. However, the problem of effective and efficient monitoring of conflict of interest lies with the controlling authorities. The autonomy and impartiality in control and supervisory bodies, as well as the inclinations to use existing procedures, according to the World Bank report, are not yet well established. Nepotism in appointments results in too many political appointees and too few professionally and technically well qualified experts. As a result, there is little incentive to use the considerable powers of the supervisory agencies to stamp out conflict of interest and other forms of corruption or to ensure high professional standards of entry to the profession and in the conduct of its activities.

5.3 Verification of Final Administrative Decisions

The legal consequences of the breach of regulations on withdrawal may be far-reaching. If an official or an agency ordered to withdraw can issue a decision that influences the sanction, it will necessarily lead to the resumption of misconduct. A decision by the official subject to suspension (or a decision issued with the participation of a member of a collective body who should have been suspended or an agency which should have been withdrawn) effects its liability to be challenged for the following five years after the date of its issuance, in the mode of resumption of administrative proceedings. It is sufficient to prove that during the next proceeding on resumption the relevant agency will be able to bring a decision that is essentially modified.⁴³

5.3.1 Supreme Administrative Court

There is only one administrative court in Poland, the Supreme Administrative Court (NSA), which has been in existence since 1980 (there had been no administrative courts in Poland from the end of the Second World War until 1980). The Court was established by the law of January 31, 1980, and by an amendment to the C.A.P. The latest act establishing the internal organization, scope of jurisdiction and procedure

before the Supreme Administrative Court was issued on May 11, 1995. Since 1980, the C.A.P. has provided the Court almost every administrative act for judicial review. The jurisdiction of the Court is based on the rule of protection of individual rights, which means that the Court takes action only on the claim of an individual, prosecutor, ombudsman or NGO.

5.4 Political Accountability

In discussions on the political life in Poland, there often appears a decreasing interest in elections—and in participation in democratic procedures in general.⁴⁴ The political institutions and politicians do not have the sympathy of Polish people.⁴⁵ On the contrary, a general indifference prevails. Even the most popular political parties winning elections encounter indifference instead of acceptance.

The public's interest in taking part in local elections does not enjoy high esteem in Poland. The average participation at the last local government elections was from 44.24 percent (in the first round) to 35.02 percent (in the second round).⁴⁶ Poles are not especially interested in participating in public life, and they don't trust politicians.

Political responsibility of politicians who are public officials at the local government level and at the same time are empowered to make administrative decisions is difficult to prove. The loss of confidence in a politician due to illegal and corrupt activities means that he/she will probably not be re-elected. Internal political accountability slowly starts to take place at the top level, when politicians of a party suspend a colleague to preserve the party's reputation (for example by a disciplinary procedure), after the press discloses illegal or corrupt behavior.

The statistics describing the last local government election (October 27, 2002) do not provide numbers for councilors or mayors re-elected once or more. However, there were 96 communities out of a total of 2,478 where only one candidate ran in the election.

5.5 Legal Liability

Apart from political liabilities, the most important role is played by legal responsibilities, such as official responsibility, disciplinary responsibility, liability of damages, and criminal responsibility.⁴⁷

As has been mentioned in the analysis, there are several forms of official liability for councilors and executive board members (appointed by the councils), such as loss of mandate, loss of per-diem, dismissal. In several cases, Polish regulations determine the kinds of liability for local government employees (mayors, deputy mayors, heads of the district executive boards, their deputies, marshals and deputy marshals, executive board

members, secretaries, treasurers, and other employees empowered to pass administrative decision on behalf of senior officials), such as the Act on Reducing Opportunities for Persons Performing Public Functions to do Business. The provided sanctions are loss of mandate or dismissal. It is worth noting in this context that the majority of administrative decisions are made by ordinary employees who are not authorized to pass administrative decisions. In such cases, they are in the position of actual decision-makers—they draft the decision which is then signed by the person formally in charge of issuing the decision.

The essential obligations of all local government employees include: public service performed in the best interest of the general public; compliance with effective laws and regulations; efficient, reliable and impartial execution of tasks; polite and kind behavior with supervisors, other employees and clients.⁴⁸ It doesn't seem to be clear how ordinary employees can be expected to impose sanctions for violating the conflict of interest limitation on the basis of these obligations.

Disciplinary responsibility is provided only for violating an employee's obligations, and the sanctions follow the legal Act on Local Government Employees⁴⁹ and the legal Act on State Agencies Employees,⁵⁰ which applies to instructional and disciplinary liability cases—the appointed local government officials bear the instructional or disciplinary liability for the violation of official obligations before the immediate superior (for the breach of a lesser degree) or before the disciplinary commission, in cases of first and second violations (of a more serious nature).

Disciplinary actions can include reprimand, reprimand with warning, reprimand with suspension of promotion for up to two years, demotion, and dismissal.

The liability of damages caused by the local government official rests with the local government unit where the official is employed.⁵¹ Moreover, if the damage is caused by the violation of the rule for withdrawal from an individual decision the basis for the liability of damages is the C.A.P.⁵² This liability is not limited to the actual damage (*damnum emergens*) but can also comprise moral compensation (*lucrum cessans*). The specific sort of regulations penalizing conflict of interest, such as corruption, are provided by the Criminal Code.⁵³

6. EXTRALEGAL INSTRUMENTS PREVENTING CONFLICT OF INTEREST

6.1 Human Resources Management Instruments

Human resources management in terms of the selection process is still a weakly regulated area in Polish law on local government employees. The candidate for a position of local government employee must have Polish citizenship, pertinent qualifications and

experience, be at least 18 years old, have all public rights and the ability to act within the law, and be in good health. These prerequisites according to Polish law are sufficient to obtain and hold the position of local government employee. Contrary to the selection process in the civil service corps of a local government, there is no pre-work qualification procedure, such as an admission exam, for checking the candidate's references, communication skills or knowledge of foreign languages.

Unfortunately the human resource system, with regard to local government employees, is usually not based on merit, experience, or competition but on family relations or friendship. This situation does not concern school principals (community), directors of hospitals (districts), museums, theatres (regions), where competitions are used to fill positions. It has to be stressed that, in regard to the specific administrative units which provide services (schools, kindergartens, etc.), the competitions are announced in accordance with legal regulations, and are merit-based.

6.2 Codes of Ethics

There is a growing role of extralegal regulations, internal regulations and procedures, such as codes of conduct, codes of ethics, and bylaws in Poland.

It might be said that these extralegal regulations play the most important role in conflict of interest prevention. Local authorities that use extralegal instruments, such as codes of ethics, demonstrate openness and transparency and make a great contribution to developing a clean (in the sense of being free from unethical behavior) and clear (accessible, transparent) public administration.

However, though regulations that seek to counter conflict of interest, the conflict of roles, and the conflict of obligations, while developing a strong basis for ethical decision-making processes are more and more popular in Poland's professional associations, such as medical, engineering, legal, business associations, they are almost unknown in Polish local governments.

In Poland, there are codes of ethics that apply to the civil service and to members of Parliament. In 2000 the Bialystok School of Public Administration initiated an analysis of organizational, legal and procedural tools supporting ethical conduct in the community for the City of Cracow and Bialystok, where, as a result, codes of ethics were adopted. However, the City of Cracow is a rare example.

Also, anticorruption measures that the European Commission has tended to recommend to candidate countries have been generally oriented towards the adoption (apart from supervision) of codes of ethics for public officials. But it appears to endorse a "top-down" approach for such codes, i.e., they are imposed from above.⁵⁴ Likewise, the approach taken by candidate countries in adopting such codes is not as broad as some of the more important lessons learnt in Western countries that have adopted ethical

codes might suggest. for example, effective codes should be detailed, and they need to be developed through a process of consultation with the officials to whom they apply.

6.3 Education and Training

Any change in human attitudes takes time. Children and young people are more amenable to influence than adults, whose views and habits are already ingrained. One positive and groundbreaking example of promoting anticorruption activities is the Anti-corruption Program's initiative targeted at students—a project that is not yet popular.⁵⁵

The project, entitled “Introduction of an ‘Anti-Corruption’ Module to the School Curriculum,” is being pursued in collaboration with the Civic Education Center in Warsaw. The Center has devised a “Civic Education at Self-Government School” program, which is now incorporated into the curriculum of secondary schools of various types. In this program, scenarios have been drawn up for six sessions for two types of schools. Young people attending these lessons learn what is understood under responsible governance, why the life of society ought to be governed by the principle of transparency, what rights extend to citizens (the right to information receives special emphasis here), what threats are caused by corruption, and what each citizen can do so that our country is governed in a better, more responsible way.

Private and public universities make great efforts to provide courses on anticorruption strategies for students, to stimulate their interest in corruption-related issues (in Bialystok School of Public Administration, Bialystok University—School of Law, and others). It emphasizes that a strong NGO sector, and academic institutions that provide analysis, build up pressure for reforms and support progress towards a more efficient strategy to reduce the extent of conflict of interest in the country.

Along with executive management and the legislature, civil society plays an important role in social education in the broadest possible sense of the term. The integrity, efficiency, and transparency of all state organs in all their operations are the main guarantors against conflict of interest.

6.4 The Role of the Media and NGOs

The role of the media and NGOs in promoting public anticorruption activities is still growing in Poland. The Program Against Corruption by the Polish Stefan Batory Foundation (Kopinska) plays the strongest role in the anticorruption campaign. The Program, in co-operation with the Social Communication Foundation, launched an educational campaign in the media in July 2000. The aim of the campaign was to raise society's awareness about the importance of the problem and the necessity to fight corruption,

as well as the need of individuals to participate in combating it. The campaign consisted of many elements and the use of a variety of media: billboards, city-lights signs, radio and TV advertisements, post-cards, and press publications.

Approximately 30 newspapers undertook their own campaign against corruption, publishing articles about corruption and printing letters from readers. Suggestions by readers were carefully followed, and they were informed about the possibilities of participating in the Program Against Corruption. Twenty local radio-stations organized their own anti-corruption blocks. The Program ordered the Social Communication Foundation and the multimedia house Group IIS to establish an Internet discussion site named *Cafe KontraKorupcja*. One can find there interviews with presidential candidates, while in the section entitled “Law Saloon” important legal acts appear on anti-corruption activities in Poland. In the “Interactive Atrium” there is a discussion forum where visitors can exchange opinions about published interviews and comments on psychological advice concerning the phenomenon of psycho-corruption.

The role of non-governmental organizations, an indispensable part of civil society, lies in educating society about the damage caused by corruption, monitoring the activities of administrations at all levels, and channeling social pressure to apply the principles of transparency in public life to politicians.

Achieving a shift in societal attitudes poses a task that will require years, and it certainly shouldn't be left up to the non-governmental organizations alone. But in a situation where such a change cannot be brought about by public institutions, such as schools or public television and radio, the issue must also be addressed by privately owned media and by NGOs. There are a number of NGOs and periodicals working to fill this gap in Poland, among them *Gazeta Wyborcza*, *Rzeczpospolita*, and *Nowe Państwo*, as well as several regional and local titles.

The Polish Batory Foundation is currently engaged in a nation-wide civic campaign with the Polish branch of Transparency International, the Social Communication Foundation, and the Helsinki Foundation for Human Rights. To run this campaign, they have assembled an Anti-Corruption Coalition of Non-Governmental Organizations. The goal of this enterprise lies in making citizens aware that their elected representatives should be honest people who do not make promises they don't intend to keep, and that it is their legitimate right as citizens to monitor the actions of elected officials.

Monitoring of the authorities combined with the publication of results, organization of educational campaigns, publication of opinion research results, hosting conferences, encouraging the media to address corruption-related issues in a responsible way—all these measures are conducive to the exertion of social pressure on politicians.

7. SUMMARY AND RECOMMENDATIONS

It seems that the key problems that faced Polish local government authorities, like additional employment cases, disclosure of assets of public officials in local government, nepotism, and a lack of public control of the local government authorities' activities, have decreased since January 1, 2003. The considerations on newly adopted changes lead to questions concerning whether standards for preventing and counteracting conflicts of interest should be universal, or whether, under certain circumstances, it is necessary or even productive to tolerate practices that would be found unacceptable or illegal in consolidated democracies. It seems that there are reasons for being cautious about the application of strict conflict of interest regulations forbidding the occupation of "incompatible" positions, or restrictions on employment. Although it is clearly desirable that local officials not be influenced in their public capacity by their ancillary activities, the immediate introduction of incompatibility provisions may have counterproductive effects in a context where conflict of interest is poorly understood and the pool of political and professional talent is small. In a worst case scenario, encouraging talented officials to leave public service might reduce efficiency, while doing little to limit conflict of interest. At a minimum, it might be more constructive to develop an understanding of the concept of conflict of interest, through mechanisms based on codes of ethics and case by case disclosure requirements.

Still, Polish laws show some inconsistencies in public procurement and privatization, problems with cronyism, abilities of the local government authorities' control powers (concerning location decisions, concessions and permits for conducting economic activity, and land and real estate management). These are the key areas where conflict of interest occurs.

In my opinion, the most significant weaknesses of Polish laws to detect and prevent conflict of interest include:

- lack of clearly defined regulation, sanctions and authority in charge of implementing sanctions, related to the use of official information for personal gain;
- lack of rules providing for political neutrality as the guiding principle for permanent local government staff;
- weak guarantees for ensuring the citizens' right of access to information;
- lack of mechanisms for the institution of withdrawing;
- poorly implemented Public Procurement Act.

The following recommendations of a general nature apply mainly to the Polish Government, the specific recommendations (like improving internal procedures) apply primarily to local government authorities and also to public officials:

- 1) It is very important to phase out patronage in local government appointments in a feasible and systematic manner, by creating a professional, reliable corps

of local government officials. The idea of creating a corps of local government employees will be important in developing human resource management and in strengthening ethics and professionalism beyond local government officials. This corps should be managed similarly to the corps of civil servants: with political neutrality, professionalism, impartiality, and effective operation. Officials should be hired based on rules of competition and professional abilities. Also, it is necessary to introduce a new culture of public service and transparent procedures.

- 2) Family relations in public office should be clearly regulated: Relatives cannot work in the same office, otherwise the public official must be excluded from the process. The statement that it is prohibited to employ in the same local government unit an official's spouse, relative or any person related by affinity up to the second degree in positions that involve the relationships of superiority and subordination—is not complex enough.

Also, the provision for an official's withdrawal from a case if the other party is the official's spouse, relative or person related by affinity up to the second degree does not constitute grounds for the limitation of employment or official mandatory withdrawal from the procedure in a case of nephews or nieces (or nephew or nieces of spouses of local government employees), his/her factual partner or the person who lives with her/him in a relationship of actual guardianship, though it does not exclude optional withdrawal. This is an obvious shortcoming of the regulation, because it seems more likely that an official's nephew or niece gets hired than his/her grandparent.⁵⁶

The situation based on the mandatory application of the official withdrawal of the self-governmental agency (and as the result—the suspension of the agency) in a case where the other party is the councilor of the self-governmental unit or the person related to him/her, should be postulated *de lege ferenda*.

- 3) It is important to create an anti-conflict of interest culture of disclosure and case by case “self-withdrawal,” rather than basing conflict of interest provisions primarily on incompatibility guidelines. This may be accomplished two ways: The first is to improve the legislation (the Local Self-Government Acts), which could state that a local government public official is obliged to include in the declaration of income and properties information on his/her close relatives. This information should be transparent and could effectively decrease the number of cases concerning employment of relatives, officials undertaking decisions involving family members, etc. The second approach is targeted at local governments—the obligation for officials to give disclosure about relatives could also be useful in the internal monitoring procedure. Transparent information on family relationships would also help in the assignment of cases, to avoid or reduce to a minimum the potential for conflict of interest.

- 4) The creation of codes of ethics in local governments, through a consultative process that enables officials to regard such codes as their own, seems to be more effective than imposing them from above. As with high level corruption, much self-government corruption is fuelled by close links between public officials and economic interests. But conflict of interest and cronyism are much harder to avoid in small communities. It is therefore all the more important that work is organized so that it is open to scrutiny and that decisions are brought in meetings that are open to the public and the press. An updated ethics code, and training and illustrations of what good practice means in procurement, licensing, privatization, and other relevant situations would also be helpful. It is important to point out that officials do not always know what guidelines to follow, having had no good examples. It would be useful to develop guides of good practice, explaining, for instance, when officials should identify conflicts of interest or excuse themselves, or that councilors should not participate in tender evaluation. Local governments could also be encouraged to adopt internal administrative codes with the force of law.⁵⁷
- 5) The current procurement law represents a significant step forward but needs to be strengthened in various respects. That is why the Polish Government should pay more attention in public procurement reform to measures designed to ensure the integrity of public procurement officers, rather than designing procedures that can be circumvented anyway—and that hamstringing honest officials. Coverage of the law should be explicitly extended to services; the complaint and appeal procedures should be better specified, reasonable time periods should be defined for bid submission (at present they are only defined for contracts valued over 200,000 euros), and delays in bid-opening should be prohibited. The Public Procurement Office also needs to improve the guides and procedures it disseminates. It is therefore urgent to supply well-designed, standardized bidding documents, at least for goods and construction work, and reform the points system used in awarding contracts, as well as strict procedures for bid evaluation.

Other safeguards to consider include the introduction of a two-level decision procedure—one for evaluation and recommendation, one for decision. Furthermore, a minimum number of members on bid and evaluation committees should be defined to make collusion more difficult. Disclosure of tenders and prices should also be in the public domain. If effectively implemented, this can prove to be a much needed improvement.

As the World Bank Report stated:

“On a large scale, pay levels could not be raised within budget ceilings without significant streamlining of functions and slimming down overstaffing in some areas of the public

service. While this would be desirable, it cannot be achieved efficiently by arbitrary cuts. Rather it requires analysis of ministerial and agency functions to identify those that can be eliminated, streamlined, or left to the private sector, together with an analysis of jobs required to perform the functions to be retained. This initial stage would need to be followed by consultation and negotiation, and elaboration of an Action Plan to implement the required changes humanely and in a way that would not be too disruptive of the normal functioning of the administration” (World Bank, 1999).

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- ⁴ Polish Constitutional Act, of April 2, 1997 (*Journal of Laws* 1997, No. 78, item 483).
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- ⁶ See: the GRECO, *First Evaluation Round, Evaluation Report on Poland*, Strasbourg, March, 2002. www.greco.coe.int.
- ⁷ *The World Bank Review of Priority Areas and Proposals for Action*, 1999, www.worldbank.org.pl.
- ⁸ The *voivode* shall be the representative of the Polish Government (the Council of Ministers) in a region. See Constitution of the Republic of Poland, Art. 152.
- ⁹ Responsible for controlling the finances of local governments.
- ¹⁰ Charged with examining individual administrative decisions undertaken by the local government agencies.
- ¹¹ Art. 190, paragraph 1, point 2a of the *Act on the Rules of Election to the Local government Councils*.
- ¹² Art. 26, paragraph 1, point 4 of the *Act on the Direct Mayor Election*.
- ¹³ Art. 18.
- ¹⁴ Art. 4.
- ¹⁵ Art. 7 of the commented act.
- ¹⁶ Art. 24f, paragraph 1 of the *Act on Community-Self Government*, art. 25b paragraph 1, of the *Act on District-Self Government*, art. 27b paragraph 1,5 of the *Act on the Region Self-Government*.
- ¹⁷ Art. 24, paragraph 1 and art. 32, paragraph 5 of the *Act on Regional Self-Government*.
- ¹⁸ December 2001 information, www.nik.gov.pl.
- ¹⁹ Art. 25, paragraph 4 of the *Act on Community-Self Government*, art. 21, paragraph 4 of the *Act on District-Self Government*, and art. 24, paragraph 3 of the *Act on Regional Self-Government*.
- ²⁰ Art. 25, paragraph 7 of the *Act on Community-Self Government*, art. 21, paragraph 5 of the *Act on District-Self Government*, and art. 24, paragraph 5 of the *Act on Regional Self-Government*.
- ²¹ Art. 21, paragraph 4a of the *Act on District-Self Government*, and art. 24, paragraph 7 of the *Act on Regional Self-Government*.
- ²² Rules of transparency are provided also by the Local government Acts, the Act on Access to Public Information, and Code of Administrative Proceedings, and limited by the Act on Protection of Undisclosed Information, and the Act on Protection of Personal Data.
- ²³ Art. 2 of the *Act on Access to the Public Information*.
- ²⁴ Art. 3 of the *Act on Access to the Public Information*, art. 11b of the *Act on Community-Self Government*, art. 8a of the *Act on District-Self Government*, and art. 15a of the *Act on Regional Self-Government*.
- ²⁵ Art. 15 of the *Act on Access to the Public Information*.

- ²⁶ Art. 5 of the *Act on Access to Public Information*.
- ²⁷ Art. 16 of the *Act on Access to Public Information*.
- ²⁸ Regulations on declaration of income and property are provided by the Local Government Acts, and The Act on Local Government Employees, and were the subject of a large change made by the Polish Parliament in November 2002.
- ²⁹ The specific relation directly subsists between the members of the executive board and the council, because, according to 12 paragraph 2 of the legal act on *District Self-Government* and art. 18, point 15 of the legal act on *Regional Self-Government*, the entire competence of the council is the selection and dismissal of the board, (as well as specification of the directions of its activities and receiving of its activity reports, and in the case of the regional council—consideration of the board activity reports).
- ³⁰ See art. 28b, 28c, 28d of the legal act on *Community Self-Government*, art. 30 and 31 of the legal act on *District Self-Government*, art. 34, 35, 36, 37, 38 and 39 of the legal act on *Regional Self-Government*.
- ³¹ See art. 30, paragraph 1 of the act on *Community Self-Government*, art. 32, paragraph 1 of the legal act on *District Self-Government*, art. 41 paragraph 2 pt 1 of the legal act on *Regional Self-Government*.
- ³² See art. 30, paragraph 2, point 1 of the act on *Community Self-Government*, art. 32, paragraph 2, point 1 of the legal act on *District Self-Government*, art. 41, paragraph 2, point 4 of the legal act on *Regional Self-Government*.
- ³³ Art. 30, paragraph 3.
- ³⁴ Art. 25a of the *Act on Community-Self Government*, art. 21, paragraph 7, of the *Act on District-Self Government*, and art. 24, paragraph 2 of the *Act on the Regional Self-Government*.
- ³⁵ According to art. 52, § 1, the general penalty is disciplinary loss of job.
- ³⁶ *Rzeczpospolita*, June 27, 1998.
- ³⁷ *Corruption and Anti-corruption* p.437, www.osi.hu.
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Election to the Local Councils, Act on Direct Mayoral Election, Civil Code, Code of Administrative Proceedings, Labor Code, and Criminal Code.

⁴⁸ Art. 15 of the *Act on the Local Government Employees*.

⁴⁹ Art. 25 and 26.

⁵⁰ Art. 34.

⁵¹ Art. 420a of the *Civil Code*.

⁵² Art. 153.

⁵³ Chapter XXIX: there are crimes of bribery (art. 228, 229), abuse of power (art. 231), protectionism (art. 230).

⁵⁴ See: *Monitoring the EU Accession Process*.

⁵⁵ www.batory.org.pl.

⁵⁶ It seems that the relevant way to recognize the closest family is the ancient Roman one, not canonic, which states that the siblings stay in the first degree of affinity. The reason is that Polish civil law which creates the relatives' affinity generally operates within the confines of the ancient Roman one.

⁵⁷ For example, similar to the *Code of Good Practice for European Institution Employees*, adopted by the European Parliament.

New Ways of Managing Conflict of Interest Problems in Romania

*Adrian Moraru, Adrian Baboi–Stroe,
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1. THE GENERAL CONTEXT FOR PREVENTING CONFLICT OF INTEREST AT THE LOCAL LEVEL

The beginning of 2003 in Romania was marked by legislative and political reforms that aimed to create the necessary tools, as well as the appropriate rules, to address the corruption phenomenon better. In the first months of 2003, new bills were announced to generate a complex remedy for the already numerous corruption cases. At the same time, civil society had closely watched these steps and immediately raised questions regarding the government's approach to the issue. Civil society representatives have complained of insufficient transparency in preparing the new legislation, and have objected to the adoption procedure that hadn't allowed any debate on the provisions.

Several analysts claimed that it was already too late, that the reform process should be speeded up, and that policy makers should decide to issue the necessary legislation, along with the necessary implementation methodology, to generate a real application of the law. Even the most skeptical analysts have agreed that complex reforms were required; that, in the absence of proper regulation, growing corruption would soon dramatically affect all other major aspects of the economy and the public institutions consolidation process. This complex reform effort is expected to involve all aspects of political life as well as of civil society. The problem of Romania issuing laws without finding the right tools to implement them, as well as the lack of proper mechanisms to evaluate their impact, is no longer unknown—important international reports underline the fact that this shortcoming in Romania needs to be addressed.

People who are in agreement on the subject believe that the real challenge is the precise definition of concepts and a proper understanding of the issue's complexity and its ramifications.

The current report has been drafted while the government and other political parties were accelerating the legislative drafting process. With some exceptions, civil society was hardly involved formally, if at all, in consultations before the new legislation was to be adopted.

Still, independent experts have continued publishing their observations about the government's anti-corruption strategy (in this context, the strategy means new legislation), offering concrete and constructive suggestions for improvement. The conclusions of the study include some references to the political debate on conflict of interest legislation and a summary of civil society concerns.

Whenever possible, the experts had consultations with policy makers in which they mentioned the preliminary findings of their research, the European recommendations on the topic of corruption, and, more specifically, conflicts of interest in local public administrations, which remained the experts' primary focus.

There is no doubt that one big problem is generated by the still existing confusion about what conflict of interest means and how the area of application is determined. Some interviewees have said it only refers to family assets. Others have underlined that it could naturally be enlarged to include benefits for their relatives, friends, or political parties or coalitions they belong to.

While drafting the current report and interviewing politicians and experts, the coordinators have heard at least 10 definitions: Many interlocutors associate a conflict of interest with incompatibilities, while others, on the contrary, describe a quite narrow vision about what conflict of interest may imply, obviously excluding the relations that exist between conflicts of interest and a transparent decision-making process, staff selection and management at a professional public institution, etc.

This is why we believe that recalling the Council of Europe's definition of conflict of interest could be a useful contribution, not only to the report but, even more important, to the future debates on the topic in Romania:

"Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties. The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organizations with whom he or she has or has had business or political relations."¹

There is a common understanding that conflicts of interest have become almost part of daily life at all public administration levels in Romania, so that the situation requires further legislative regulations and, mostly, a strong political will to implement them and effective tools to control their application. While in the capital and other big cities, mostly thanks to media coverage, the public is more familiar with the level of conflict of interest and local political correlations, there is very little evidence coming from the country side, a situation that gives a poor overall picture of the whole country.

The current study focuses on conflicts of interest at the local public administration level but, because Romanian local political life can not be disassociated from the central

government, which remains extremely influential, some observations could be also applied to the national dimension of corruption.

One conclusion all experts agreed on was that the web of corruption (of which conflict of interest is but one crucial area) requires an updated legislative framework that will equally respond to the EU standards, with which Romania is concerned, and to local needs and specifics.

The new legislative provisions need to take into account the following:

- The already existing legislation has been poorly implemented. There is no tradition of assessing the implementation of the law, and, for that matter, issuing new legislation doesn't guarantee that its application will follow.
- The culture of practicing corruption at all levels and at different degrees that exists in Romania: Gift giving to members of public institutions has been a natural part of Romanians' way of taking care of an issue at a public institution. The more complicated or urgent the issue is, the more substantial the gift is to be offered.
- A certain temptation that policy makers at different levels were feeling to use public property, public resources and/or preferential information to their own benefit, as if this behavior were normal. As this is a widespread practice, control was practically inefficient, if it was applied at all. Ultimately, auditors are regular public servants, very much aware that their effort to control any high official will possibly not remain without consequences.
- A conformist mentality in Romanian public institutions that has a direct impact on all regular public servants who have something to report about the misconduct of their superior.

These are just a few examples of the context and concerns policy makers are dealing with when debating legislation reform.

In brief, most commentaries that were expressed in the current legislative revising process refer to:

- a) Proper elaboration to cope with EU recommendations and standards.
- b) A coherent, articulated, and also realistic, set of provisions to help Romanian democracy prevent and control the increase in corruption through decreasing the number of conflict of interest situations, among other strategies.
- c) Secondary legislation (that could be a code of ethics or internal code of conduct) to complement the law. The role of this secondary legislation will be very important, as it could regulate the emerging particularities that one single law may miss.
- d) Drafting realistic legislation, to make sure it is applicable, while developing appropriate evaluation indicators that will allow an efficient legislative solution for the phenomenon.

The debate about how to better fight corruption (conflicts of interest included) in Romania is not yet finalized. The biggest concern, though, has been the issue of how to better interpret and implement legislation.

Apart from the government, which has pledged to make all necessary efforts to develop a professional monitoring methodology applicable all around the country, Romanian civic groups have expressed their commitment to seriously watch the next steps and monitor each phase in the law's implementation process.

It also needs to be underlined from the very beginning of the present report that, in Romania, conflict of interest is not a criminal offence. The spirit of conflict of interest resolution consists of solving it without penalties. This treatment can not discourage conflicts of interest (at all levels of public administration in Romania), as long as those involved are not severely punished.

1.1 The Structure of Local Government in Romania

Members of elected bodies, local government employees and senior government officials are the ones primarily prone to conflicts of interest.

There are three types of territorial-administrative units in Romania: communes, towns/municipalities, and counties. The local government in Romania has a non-hierarchical two-level structure, with towns/municipalities and communes at the first level, and counties (judete) at the second level. There are 41 counties (Bucharest is considered as a separate one, the 42nd county), approximately 265 towns and municipalities and 2,686 communes (July 2001—figures are in a continuous change). Conforming to certain criteria, new communes were formed, and different small communes were merged into single towns. This administrative change has had budgetary and political consequences.

Managing a county is not only the responsibility of elected officials but also of government-appointed representatives, i.e., the prefect. In accordance with the above-mentioned territorial division in Romania, there are 42 appointed prefects, their main responsibility being to supervise the legality of local acts.

1.2 Position, Roles, and Functions of Members of Elected Bodies, Local Government Employees, and Senior Local Government Officials

Local Councils are formed by councilors elected at town/municipality or commune level. The mayors are also directly elected at town/municipality or commune level. The mayor is assisted by two deputy mayors, or one if the community is small. These deputies are

elected from among the members of the local council. Each deputy mayor has separate responsibilities; these responsibilities are decided with the mayor and according to local needs. One of the deputy mayors will substitute for the mayor whenever it's called for. The need for a better definition (eventually a better explained role in the legislation) has been constantly underlined by independent experts and political parties. Some recent proposals suggest that the local council should be the one deciding the separate, distinctive responsibilities between the two deputy mayors. Similar propositions were issued for the county councils' vice-presidents.

The staff (employees) of the local councils are managed by a secretary, who has the status of civil servant. The employees of the local councils at certain levels also have the status of civil servants. The rest of the employees work for the local authority on a contractual basis. They are not public servants but have to follow the provisions of the internal code of conduct of the institution they work for.

Although the institution of the prefect is not strictly speaking a part of the local public administration but an executive body representing the government at the county level, it is important to mention two main reasons in this context as to why. The role and responsibilities of the prefect make it closely interconnected with the operations and decision-making process of the local public administration. In each county it is the prefect's responsibility to supervise the legality of local decisions.

Apart from locally elected and appointed officials, a local public administration relies upon a professional executive body. Law No. 188/1999 on the status of civil servants regulates the main executive positions' responsibilities. This law provides a classification of the offices that should be held by civil servants in the local government. It is important to note that the law differentiates between officials vested with public authority and the rest of the staff (such as secretaries, maintenance personnel, drivers, etc). Only the first category is subject to Law No. 188/1999. With reference to local public administrations, the law precisely stipulates the list of positions vested with the status of civil servants, including:

- Senior civil servant positions: county/Bucharest municipality secretary, municipality/Bucharest sector/town/commune secretary, head of department, chief architect, general director/deputy general director, director/deputy director, chief financial clerk, head of service, head of office.
- Regular civil service positions: adviser, expert, specialized inspector, legal counselor, auditor, specialized referent, inspector, referent.

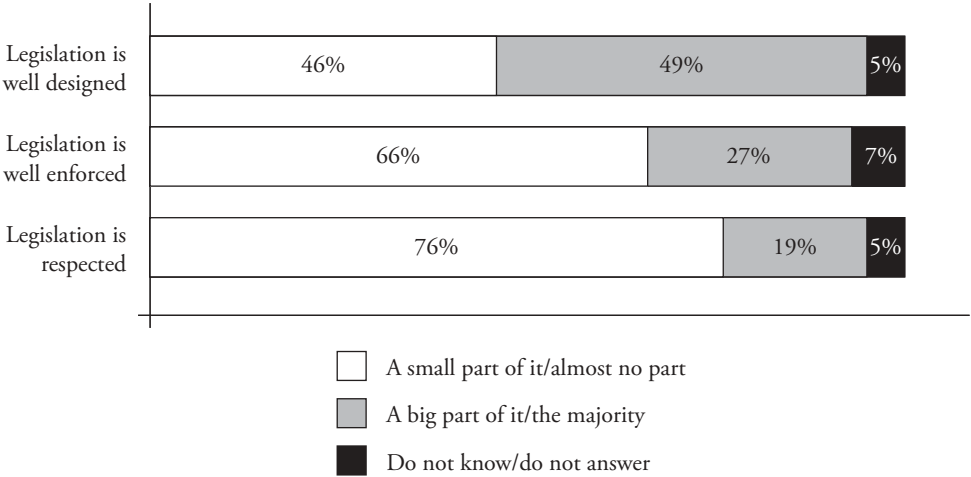
These positions should concern all local communities in Romania. They are the professional staff of the local public administration, appointed on the basis of professional criteria. The professionalization of the administrative staff is one of the most important current debates in Romania. This staff must play a role in improving local community development through better local services delivery, with special emphasis on quality.

Reform designed to create a strong professional body of civil servants in Romania has started and will remain an ongoing process, leading to continuous training of personnel. Although they are not appointed based on political criteria, they are accountable to their supervisors, who often represent different political parties.

According to Romanian legislation, professional staff activity should not depend on political changes, although in some cases (directly depending on the political stakes) high level positions (directors, personal advisors) are potentially subject to change depending on the political affiliation of the institution's leader in office.

As important international institutions and domestic think tanks have already pointed out, one of the most problematic aspects that Romania has to deal with today is not necessarily the absence of legislation (although some areas, including the local administration field, could be further regulated) but its actual implementation. Provisions are often vague enough to leave space for interpretations that ultimately lead to the non-implementation of the law. As for the growing number of legislative abuses, many citizens have complained about legislative inconsistencies and insufficient law enforcement. The following chart exemplifies this statement.

Figure 5.1
Do You Think that in Romania...



Source: Open Society Foundation, Romania. *Public Opinion Barometer*, October 2002.

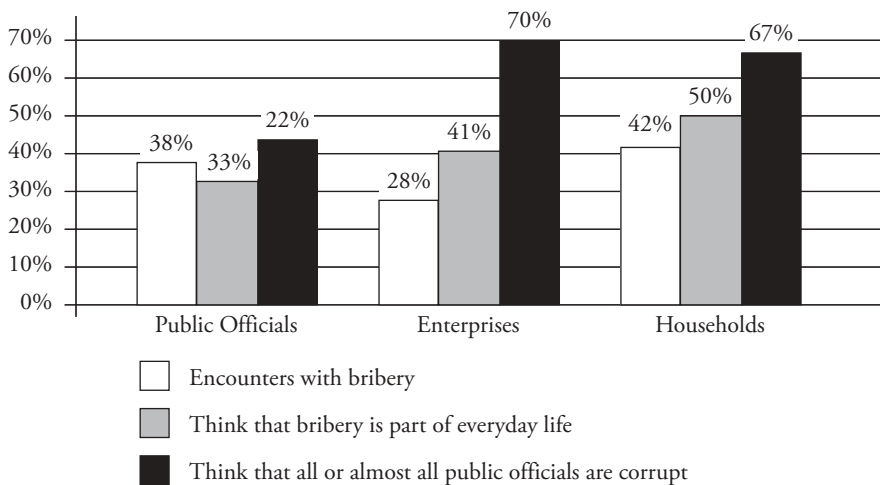
1.3 Evidence of the Scale of Conflict of Interest Problems in Romania

As conflict of interest is closely related to the general phenomenon of corruption, statistical data about the magnitude of corruption can be considered relevant background information. In the last Corruption Perception Index, conducted by Transparency International² in 2002, Romania scored a relatively poor 2.6 (on a 0–10 scale) and ranked 77th out of 102 surveyed countries.

Another major data source regarding corruption perception and practices in Romania is the EBRD/World Bank 1999 *Business Environment and Enterprise Performance Survey (BEEPS)*. The 1999 BEEPS assessed Romania as the only EU candidate country affected by both high “state capture” and high “administrative corruption.” “State capture” is a theoretical concept that designates “the efforts of firms to shape and influence the underlying rules of the game (i.e., legislation, laws, rules, and decrees) through private payments to public officials,”³ while “administrative corruption” applies to “the illicit payments required from the firm in the (oft-distorted and arbitrary) implementation of existing regulations, policies and laws.”⁴

In year 2000, the Romanian Government commissioned the World Bank to produce a *Diagnostic Survey of Corruption in Romania*, research that produced the most comprehensive corruption-related data set in Romania so far.

Figure 5.2
Overall Corruption: Perceptions and Experiences

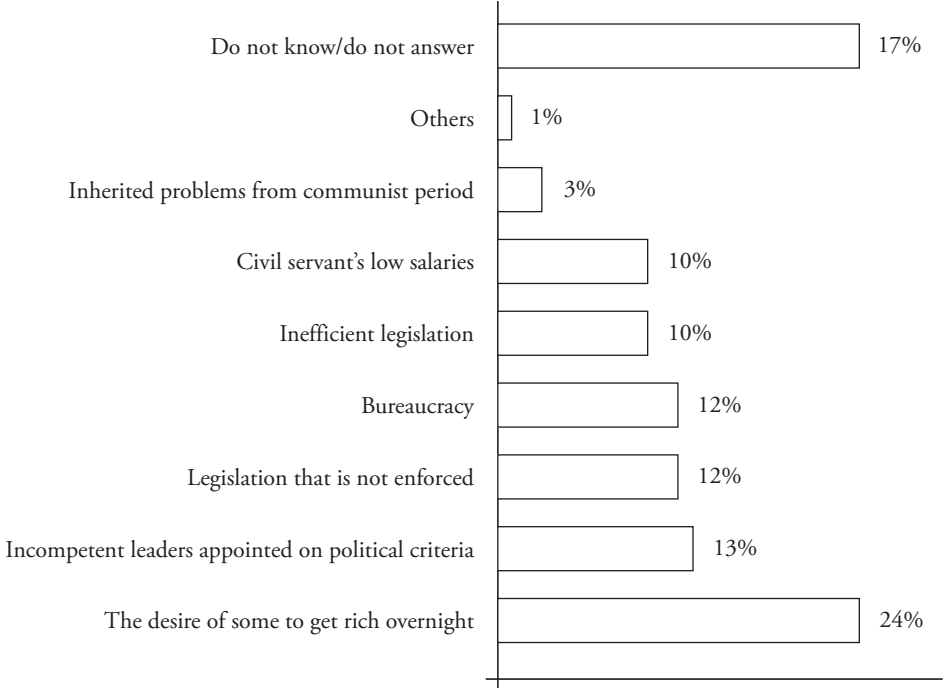


Note: Encounters with bribery means percentage of respondents who encountered bribery in the previous 12 months.

Source: World Bank, *Diagnostic Surveys of Corruption in Romania*, 2001.

Although a significant amount of information relevant to corruption has been gathered in the last three years, there is no specific statistical data available on the perceptions or experiences of the general public with conflict of interest in the Romanian administration. Still, some statistical information about recent public perceptions of the corruption phenomenon in Romania could be interesting in this context.

Figure 5.3
What is the Main Reason for Corruption in Romania?
(Two Choices, Cumulative Answers)



Source: Open Society Foundation, Romania. *Public Opinion Barometer*, October 2002.

After a series of media reports, the large scale of economic conflict of interests in local government was acknowledged by the Romanian Government as a major issue, and the government decided to enact Emergency Ordinance No. 5/2002 in January 2002 to introduce and strengthen prohibitions for local government elected officials and civil servants. This act primarily forbids commercial firms in which the local government officials and/or civil servants are managers, significant shareholders, associates, administrators, and auditors to contract for services, work, or supplies with the respective local government and its subordinated companies.

Because reciprocal accusations of conflict of interest between various Romanian political parties has become common practice, the media has published several lists of local councilors who are allegedly in an economic conflict of interest situation, according to allegations by their political opponents. The lists were provided directly by the parties that, through their local members, managed to collect the necessary information. Some national newspapers also researched the topic, publishing estimates on how widespread economic conflicts of interest have become, occasionally including lists of names. Still, none of the information provided by opposition parties or by the media has been double-checked.

1.4 Measures and Initiatives to Improve Prevention of Conflict of Interest During Post-Communist Transition

Unfortunately, legislative measures against various aspects of conflict of interest that were considered really efficient have been introduced in Romania only recently. The government's approach in dealing with the phenomenon, between 1996 and 2000, had a methodology that made more use of committees and commissions. The former president of Romania, Emil Constantinescu, decided to form county committees and a national commission in which to determine the best route to target corruption. The president himself took the lead in the campaign, in an attempt to stimulate the necessary actions at public institutions. His vision was to bring together all segments of public administration as well as of civil society, and encourage them to assume a more pro-active role in dealing with corruption at all levels. Unfortunately, this approach, although quite deliberative, led to no concrete results.

For instance, the Law on the Status of Civil Servants was adopted in 1999, the Law on Preventing and Combating Corruption in 2000, the Law on Public Procurement, the Law on Free Access to Information, and a new Law on Local Government, in 2001. As mentioned above, an act specifically directed at economic conflict of interest in local government was adopted no earlier than January 2002, following great public pressure and scandals reported by the media.

Even though references to the relevant regulations will be made in the following section of the report, an overview of present legal provisions on conflict of interest in the local government is necessary from the very beginning.

1.4.1 Law on Local Public Administration (2001)

Law No. 215/2001 on Local Public Administration has two articles that discuss incompatibilities at the local level. Art. 30 prohibits local council members from simultaneously holding other positions such as:

- prefect or deputy prefect;
- civil servant in a local public administration (county council, prefect hall) or in central public administration;
- civil servant in public services at municipal or county level, in the decentralized public services;
- employee of a local public administration (in the sense that one can not be employed by the same public authority where he serves as an elected official);
- employee of the prefect hall (in the sense that he can not serve as an employee in the prefect hall of the same county);
- manager or member of the board of directors of public utility companies established by local and county councils;
- mayor;
- member of parliament, cabinet minister;
- secretary of state, deputy secretary of state, and any other equivalent positions.

Furthermore, holding the office of councilor, mayor or deputy mayor is incompatible with the following positions:⁵

- management positions in commercial firms where the state or the local government is the main shareholder or in state-owned or public utility companies;
- any other position in a public office or activity, except teaching and positions in non-governmental organizations.

The position of prefect is incompatible with the position of member of Parliament, member of Government, mayor, or local or county councilor. He cannot hold a professional representative job, any other public function, or a professional activity paid by autonomous companies or by commercial companies with state or private capital.

There is a legal term of 10 days for solving a situation of incompatibility and failure to do so can lead to the termination of the local elected official's mandate (art. 60 and 72). The law also stipulates the obligation of local elected officials to withdraw from taking part in decisions on matters in which they or their relatives, up to the fourth degree, have a family interest (art. 47). Decisions made without compliance with this rule are void *de jure* and can be attacked by any interested person.

Some political parties have published lists with potential infringements of the legislation. This information revealed already known cases rather than promoting the prevention of conflicts of interest. The media has followed some of these cases and covered interesting stories involving local political leaders. However, there is no policy in place by the respective institutions to deal with the frequent cases reported on by the media. Political parties, in their turn, promised definitive political measures if any

of their local members were to violate the law. No such cases have been encountered so far, but parties promised an unbiased assessment of the situation before the upcoming elections in 2004.

1.4.2 Law on Preventing Corruption (2000)

A set of generic provisions relevant to the issue of conflict of interest were introduced in the Law No. 78/2000 on Preventing and Combating Corruption, which covered the following actions relating to crimes of corruption:

- engaging in commercial transactions incompatible with one's public position by using information acquired in public office (art. 12);
- using confidential information or allowing access to such information to unauthorized third parties (art. 12).

Art. 4 of this law also provides for the obligation of the holders of a public office to declare in 30 days any direct or indirect donation and gifts received related to their public duties, except those of a "symbolic" (minor) value. The text neither specifies a threshold defining the "symbolic" character of a gift nor stipulates sanctions for non-compliance.

1.4.3 Law on the Status of Civil Servants (1999)

The main legal framework regulating conflict of interest related to civil servants is Law No. 188/1999 on the Status of Civil Servants. Section 4 (art. 56–57) is devoted entirely to prohibitions applying to civil servants, such as:

- a civil servant position is incompatible with any other public office engagement, except teaching;
- civil servants are not allowed to hold any position in public utility companies, commercial firms or any other profit-making entities;
- civil servants are not allowed to engage in any activities that have a relationship with their official duties in privately owned companies.

Civil servants have the obligation to fill out financial disclosure statements upon appointment and termination of employment of a specific position. They are not allowed to accept any gifts or favors related to their public office (art. 46).

1.4.4 Law on Disclosure of Assets (1996)

The supervision of assets and financial situation of public officials and civil servants has been regulated since the adoption of Law No. 115/1996 on Financial and Property Statements. Public officials and civil servants are requested to fill out the financial disclosure report within 15 days after the commencement of their term/employment and 15 days after the end of their term/employment. The information requested covers official's own financial resources and assets, financial resources and assets shared with spouses, and financial resources and assets of children in the official's custody. The main shortcoming of this law resides in the non-public character of these statements. This drastically diminishes its preventive role.

1.4.5 Discussions and New Proposals, 2002 and 2003

In the year 2002, the concern for better regulation of conflict of interest increased. Two very different draft laws on conflict of interest were issued; one originating with the government and the second with an opposition political party (National Liberal Party). The first is narrower in scope and covers members and employees of the executive branch only, while the latter is far more comprehensive, covering also local government officials and employees. Although they do not deal directly with conflict of interest, two other draft laws on transparency in the decision-making process and on disclosure of public officials' financial and property statements were also developed at the same time.

In 2002, besides legislative measures, there were isolated political initiatives at the local level, intended to set good examples of solving conflict of interest situations by voluntary withdrawal of councilors, either from public office or private business (for instance, the initiative of the opposition Democratic Party). The elected officials of the opposition National Peasant Christian Democratic Party, which voluntarily disclosed financial statements, represents another relevant example of how party leaders could be instrumental in implementing a law which, in a way, very much concerns the party's existence.

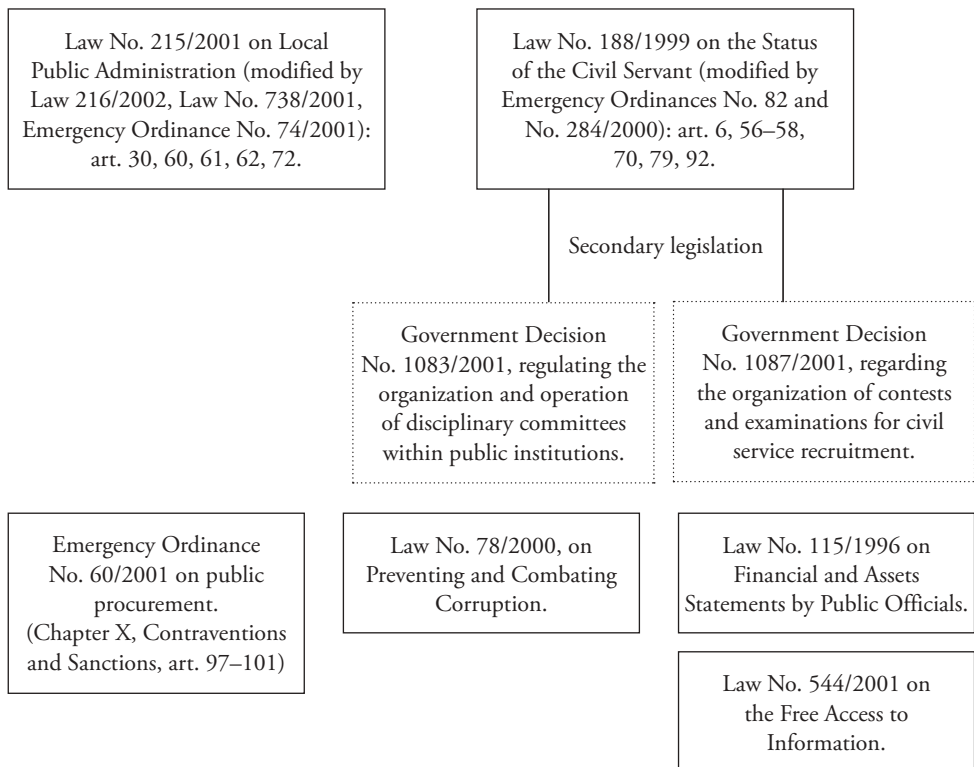
In a late development, the government, through the National Agency of Civil Servants, intends to promote a code of conduct for civil servants. In this code, some of the potential conflicts of interest are taken into consideration. It is the Romanian Government's intention to give the code the judicial force of law, making it more important than a simple internal regulation paper. Judging from the latest extensive debate of civil society on the civil servants code of conduct, this area seems to be one of the most delicate and also urgent to consider in the reform process of public administration in Romania. When discussing the need to give gifts and favors, Romanians frequently associate these practices with civil servants.

As this report was reaching its conclusion, the government was still debating the necessary legislation concerning civil servants. Obviously, the code was not part of the anti-corruption legislation the government presented to Parliament (March 2003). Details about the government's recent anti-corruption legislative approach are introduced in the Conclusions section of the report. In the existing context, it is expected that further documentation and consultations on the civil servant code are to be implemented before adopting the law, to harmonize it with the newly adopted anti-corruption legislation.

Tolerated as it was, conflict of interest became a more and more serious threat to Romania's still young democracy. The current situation made the policy makers realize that committed political and legislative actions should no longer be postponed. There's no doubt that the international reports underlining the current status of corruption in Romania stimulated the acceleration of reforms. It is obvious that the new circumstances of Romania's NATO/EU accession played a crucial role when the government announced multi-level and comprehensive legislative regulations.

Figure 5.4

Representation of the Main Legislative Provisions on Conflict of Interest



After a period of solving corruption issues as they were happening, policy makers have decided to prevent further escalation of the phenomenon by issuing additional legislation. With the importance of such regulations stressed, the real question of whether the government would fully and non-partially implement them remains to be seen. In this context, the opposition parties, non-governmental organizations, and the media have spoken about their future projects to monitor the anti-corruption legislation application, assessing the government's capacities and making concrete improvement recommendations whenever appropriate, as well as joining the institutions' efforts to prevent future escalation of conflicts of interest and corruption.

Recommendations:

- 1) When defining the terminology, Romania's conflict of interest specifics need to be carefully assessed. Also, European recommendations regarding conflict of interest regulation should be the basis for developing national legislation.
- 2) Before further regulations are developed, we suggest a thorough examination of current legislation, for harmonization of different provisions.
- 3) Solving conflicts of interest should go beyond the occasional removal of an official's position whenever serious cases of conflict of interest occur.
- 4) An easy-to-file complaint system against all forms of conflict of interest should be designed and regulated, to allow citizens' access.

2. POTENTIAL SOURCES OF CONFLICT OF INTEREST IN LOCAL GOVERNMENTS

2.1 Duplication of Power

"Conflict of interest" as such is a relatively new concept in Romania as far as its application to public administration is concerned (it had larger recognition in the private sector, and it was one of the key terms in corporate governance debates). The concept of "incompatibility" was used instead of conflict of interest, first in the Romanian Constitution but also in other special legislation mentioned in this report.

There are a number of incompatibilities relevant to local public administration provided by Law No. 215/2001 on Local Public Administration. All such cases were detailed in Chapter 1.4. Besides the prohibition of conflict of roles between elected local government and central government executive offices, Romanian legislation includes other relevant provisions when it comes to incompatibilities with offices falling under other jurisdictions, such as active military, police, judges, public attorney, Constitutional Court, Court of Audit, etc.

Although the law prohibits the overlap between the role of a local government employee and member of a local elected body, the enforcement of the relevant provisions is rather weak. Members of the county council in Iași county were mentioned in the media because they were also working as employees of the mayor's office. It is very likely that such a situation is aggravated in smaller communities, where qualified human resources are scarce. However, this circumstance by no means can provide a complete explanation of these practices, since other situations occur in a very different environment. In Bucharest, a councilor of the 5th Sector held, in the past mandate, the position of head of public domain inspectors. Presently he is a Bucharest General Council member and head of the Control Department of the 6th Sector mayor's office.

The conflict of roles between members of local elected bodies or senior local officials and civil servants at a national government agency is explicitly prohibited, but the unclear formulation of these provisions leaves room for attempts to avoid the appearance of incompatibility.

The most significant attempt of transgression was made by former Prime Minister Victor Ciorbea (1996–1998), who nominally kept his position of elected Mayor of the Bucharest Municipality during his term of prime minister. An attempt to justify that situation was made based on a legal interpretation of a specious distinction between the concurrent holding and the actual execution of two public offices. Basically, it was claimed that only the simultaneous actual execution of both offices would generate a situation of incompatibility and that the prime minister would be entitled to nominally keep his office of mayor alongside his mandate as prime minister while merely suspending the execution of his mayoral duties. Even though Prime Minister Ciorbea eventually resigned from the office of mayor a few months after the elections, this decision was primarily determined neither by the weakness of this argument nor by the severe public criticism, but rather by his lack of political support from his own political party (National Peasant Christian Democratic Party).

A special case is related to the “personal advisors” of senior public officials and dignitaries, whose appointment is very arbitrary, mainly based on loyalty and discipline. Such an example is the case of a local elected councilor who is the adviser to the minister of agriculture after holding the position of personal adviser to Prime Minister Adrian Năstase. The arbitrary nature of the appointments of the already high number of personal advisers is aggravated by factors such as the lack of precise professional criteria for their selection and their special status among the public administration personnel. In Romania, personal advisers are paid positions and, what is even more important, they are not classified as public servants, which accords them a special status at public institutions, different from other staff.

Because these positions are often perceived as “low profile” activities, they can easily shift from their original responsibilities to promoting personal interests, using their influence at high decision-making levels.

Overall, there is a need for more rigorous enforcement and clarification of conflict of roles of staff in local elected bodies to avoid situations such as overlapping with the position of civil servant:

- in the local government of the same local community;
- in the local government of another local community;
- of executive agencies in the same local community;
- of executive agencies in another local community.

The conflict of roles of local government officials and owners of local media is one of the most frequent examples of conflict of interest at the local level in Romania. Its main consequences lead to a growing trend of concentration of media ownership at the county and regional level and a limitation of the freedom of expression of the local media in exposing corruption cases and criminal activities.

Salient examples come from Constanța and Bacău counties, where mayors have a major influence on the local print and/or electronic media and distribution channels, based on their position as owners or significant shareholders; there are also many other examples of more diffuse control over media in other regions, indicating an involvement of members of Parliament in joint businesses with local, politically active businessmen. The most prominent situation is the tendency of local elected officials to gain and maintain a monopoly on the media at the local level by using their influence or their direct authority.

As marginal as the sports field might seem, there are strong reasons for mentioning it in the context of conflict of interest. The position of a sports club owner, especially in such popular sports such as football, offers privileged means for collecting and manipulating public sympathy that can easily be converted into votes. Therefore, it is no coincidence that many prominent locally elected officials and politicians are, at the same time, owners of sports clubs and associations. There is no legal regulation or code of conduct in this regard, although the issue has been acknowledged as a serious political matter.⁷ The above-mentioned situations place conflict of interest into a larger perspective, since there are local public funds that the local authorities are investing into sports-related projects. Examples can be found in the local municipalities of Bacău, Braşov and Craiova.

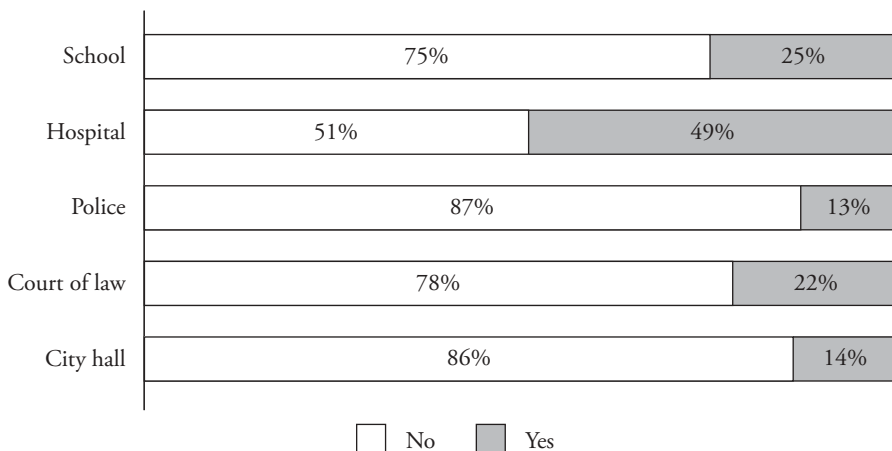
Along with the growing importance of the local authorities and associations in Romania, their leading positions became very attractive for members of the central government. Those who consider these positions valuable (both in terms of visibility and access to international funds that have been, in fact, primarily allocated to such associations in recent years) are former members of local public administrations. They are the ones currently representing the local authorities' needs while negotiating with the central government, of which they are also members.

2.2 Economic Conflict of Interest

Accepting gifts and hospitality is a widespread practice in Romanian local governments and in the public sector as a whole. City hall, as the public institution in charge of the most directly citizen-related issues, is one of the first public institutions where Romanians are used to offering gifts. The following chart gives us a picture of the gift-giving practice in Romania. City hall members receiving gifts are high on the list. It is interesting to note that the rest of the percentages are also high which indicates the wide scale of such practice in Romania.

Figure 5.5

During the Last Year, if You or a Member of Your Family had a Problem to be Solved by a Public Institution, have You had to Offer a Gift to a Member of ...



Source: Open Society Foundation, Romania. *Public Opinion Barometer*, May 2001

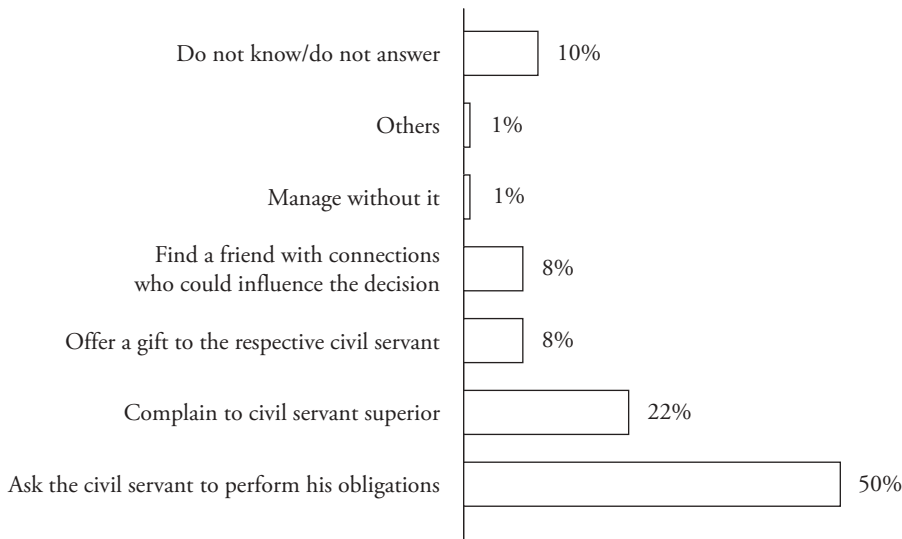
On the subject of options, Figure 5.6 indicates that many citizens would prefer that the public servants first fulfill their duties and only later would they offer a gift, if there is no other option. According to the diagram, Romanians would rather complain to the supervisor of an unhelpful public servant first, as opposed to offering a gift right away. An analysis of the chart results in other interesting conclusions, but this is not the aim of the present report.

Although Law No. 188/1999 on the Status of the Civil Servant and the Law No. 78/2000 on Preventing and Combating Corruption both have introduced provisions against this practice, their implementation is so far rather poor. According to the provisions in Law No. 188/1999, all civil servants are forbidden to directly or indirectly solicit or

accept, for others or for themselves, any gifts that are offered to influence their service. Civil servants in executive positions should not be directly involved with any solicitation whose resolution falls in his mandate.

Furthermore, Law No. 78/2000 regulates bribery and influence peddling, stipulating that the legal punishment for the civil servants included in the Penal Code is more severe.

Figure 5.6
What Should a Person Do when, for a Specific Problem that Needs an Official Approval/Authorization, the Civil Servant Keeps Delaying the Resolution ...



Source: Open Society Foundation, Romania. *Public Opinion Barometer*, November 2001.

The main reason for the perpetuation of this practice is the absence of a sound organizational culture in public institutions, associated with delays in the general reform of Romanian public administration. This problem is also amplified by a cultural factor: As indicated by public opinion surveys,⁸ relationships between civil servants/public officials and citizens are not understood as professional ones, but as informal relationships dominated by obligations of reciprocity, or rather a citizen's natural obligation *vis-à-vis* civil servants.

The elected officials of local governments and, to a smaller extent, their employees, are frequently involved in business interests. This involvement takes various forms: They may be major shareholders, administrators, and managers of private and public

companies. Such involvements can also include ownership of private enterprises that are somehow under the jurisdiction of the councils (for instance through association). This overlap allows officials to gain economic advantages by means of preferential access to inside information about public procurement and concession contracts or privatization deals. Although these situations are legally regulated by Law No. 215/2001 concerning elected officials and by Law No. 188/1999 concerning civil servants, with other supplementary regulations for both categories being provided by Government Ordinance No. 5/2002 provisions, there is no enforced mechanism for the strict monitoring of illegal conduct.

More precisely, Government Ordinance no. 5/2002 stipulates that no private enterprise whose managers, significant shareholders, associates, executive administrator, auditors, or board members are elected local officials (local councilors, county councilors, mayors of all community sizes, deputy mayors, or presidents and vice-presidents of the county councils) is permitted to contract for public funds. No commercial link or any contractual agreement that involves local officials is permitted with public utility companies (*regie autonoma*).

The above-mentioned provisions are also applied to civil servants and any other employee of the respective public administration body or subordinated public utility company. These same provisions are applied to the relatives of the local elected officials up to the second degree. It is important to emphasize in this context that the extent of family relations covered by the regulations is not always consistent. For example, other provisions already in place, referring to a local official who is not allowed to participate in any debate and decision from which he or his relatives up to the fourth degree are financially gaining, impose more severe obligations.

There are ambiguities in the regulation of some incompatibilities: Even if the positions of elected local officials and managers of public utility companies (*regie autonoma*) or public services subject to the local council cannot be combined, this prohibition does not explicitly refer to lower positions, such as deputy directors or technical or economic directors.

According to data collected by the Democratic Party and National Liberal Party, at the beginning of 2002, a number of the 573 local elected officials from the ruling Social Democracy Party (PSD) had business relationships with public utility companies (regii autonome) or commercial companies subordinated to the local councils that the elected officials were members of.

A recent Emergency Ordinance (No. 16/2002) regulating the “public-private partnership” has a serious potential for engendering new forms of conflict of interest by stimulating the involvement of the local councils in commercial activities. These practices will directly affect the principles of free competition, leading to corrupt or

politically biased allocation of resources. Most recent examples come from the establishment of public stores with subsidized prices (*economate*) and the national program of free distribution of “cakes and milk” in public schools.

There are cases where the managers of private companies that did business with the municipality eventually became elected local officials with the sole motivation of acquiring a better position for promoting their commercial interests. One relevant example is the manager of a lightning company who continued to hold his private position after being elected to the local council.

Engaging in other paid employment or paid activities is a common situation for local elected government officials, especially county and local councilors. The most frequent explanation they provide is that revenues they earn from exercising their public responsibilities are not sufficient (as a matter of fact such a claim is justified because of low fees per council meeting). More worrying are the cases of civil servants (employees) whose economic conflict of interest of this type are tolerated, for instance city chief-architects who are, at the same time, employees of a construction company doing business with the municipality. In this last respect, the delay in the enactment of the secondary legislation related to Law No. 188/1999 on the Status of Civil Servants has very negative effects. A draft on civil servants code of conduct was recently developed by the National Agency for Civil Servants (the political debates on the code are not over yet). The draft has been publicly debated since the fall of 2002, its completion being an important priority since the creation of the agency in February 2000. The code is meant to complement the law and more clearly stipulate the mechanisms and the authorities supervising the above-mentioned misconduct.

Today, there are no legal restrictions on post-employment activities of a person who previously represented a public institution in a transaction with a private company. This is a major source of conflict of interest, not only for local government officials but for the public sector as a whole.

For instance, a local councilor of the Bucharest Municipality occupying the position of director of the water supply public utility company (regie autonoma) led the negotiations with the private company that eventually won the concession of the water supply services. After ending his public service, the winning company hired him as a consultant. Even though it is not an example taken from local government, the following situation is also quite typical: A former director in the Ministry of Environmental Protection in charge of inspecting and evaluating the environmental implications of a large private mining project, became the director of the mining company shortly after leaving his public office.

A particular conflict of interest situation comes from sponsorships granted by commercial companies to foundations closely connected to political parties, in an effort to win public tender contracts.

The media recently brought under public scrutiny the case of foundations from Ialomița County, connected to the ruling party, which received sponsorship from a commercial firm that won the public tender for the governmental program “cakes and milk,” aimed at providing free breakfast to students in elementary schools. Following media reports and political reactions, the prime minister’s Control Department has triggered a control action.

In this example, the foundations had no direct contractual link with the local authority. At the same time, it should be noted that there are frequent cases in Romania wherein local authorities subcontract various services to NGOs with which they have successful partnerships. The evident conflict of interest begins when a foundation/association gets a publicly funded project while being led by a local official who is also part of the decision-making process of the financial agreements. Under these circumstances, all prohibitions regarding private companies that are managed/owned by a local official while receiving publicly funded contracts should be equally applied to non-governmental organizations whose leaders are also holding a local public position at the same time.

The role of the NGOs in the whole debate on conflict of interest is very important, and therefore it has generated many disputes recently. Independent analysts determined that financial links between parties and NGOs directly affect the still fragile NGOs’ credibility in Romania. Obviously, the sometimes money-driven activities of non-governmental organizations have increased the interest of local and national politicians in getting involved in the NGO sector. Behind declarations of noble aims, foundations run by local politicians very often find easier, convenient financial routes through which to channel funds to finance different party activities. Donors have also become more and more interested in supervising and, of course, discouraging, such practices.

2.3 Conflict of Interest of Personal Relations

While nepotism is openly charged in political debates, there are no substantive mechanisms to prevent it. As a result, there is a plethora of media reports about relatives being employed in local government institutions under the influence of public officials.

Economic activities by spouses of local government officials are not only a frequent practice, but also the best cover for public officials who claim their distance from business interests.

Regarding the mechanisms to prevent personal association of public officials with clients and matters/cases under official consideration, Law No. 215/2001 on Local Public Administrations contains a provision requiring officials to withdraw from

debate/decision-making if they or their relatives have a family interest in the matter under consideration. In fact, the text is unclear as to the meaning of “family interest” of local elected representatives, which renders it almost inapplicable to some concrete situations: While the situation of an individual decision (a particular concession, procurement, etc.) is quite clear and indisputable, regarding the requirement of withdrawal, this is not the case when it comes to deliberations of a more general nature, concerning adoption of normative acts.

The provision states that a member of the local council cannot be involved in the deliberation process or be part of the decision-making process, if, directly or through relatives up to the fourth degree, he has a personal interest in the matter. The same regulation applies if he is a part of the management team of a *regie autonoma* or private enterprise involved in the respective decision.

Any local council decision that is adopted while ignoring the above-mentioned rule is subject to cancellation. It is the prefect’s role, however, to supervise the legality of any local council decision, which makes him the main institution in charge of appealing the encountered illegal decisions to the administrative sections of the courts (*contencios administrativ*). At the same time, any citizen can submit an appeal.

There are no systematic mechanisms to prevent preferential treatment of friends, colleagues and family members. The smaller the community, the greater the chances of nepotism in local public administration. Small communities in Romania suffer from a very limited number of intellectuals from among whom to select as future candidates for any position in the local public administration or to nominate as a trained, professional civil servant. Under these circumstances, it is very likely that close relatives are found who are part of the same local, small or even medium-sized public administration body, mainly due to the limited alternatives, as well as to the limited interest potential candidates might show for a public role in the community. Unquestionably, the level of compensation discourages well qualified potential candidates, who are aware they could be easily paid better if they join a private company.

On the other hand, we have to note that the smaller the community, the more limited the number of elected local public officials and civil servants will be. Stressing the above situation, the law should not differentiate between large communities and smaller ones when it comes to nepotism situations.

2.4 Using Official Information for Personal Profit

Romanian authorities can hardly be described as being too generous with information at their disposal. There is a prevalent culture of secrecy in the Romanian public sector and there are still great difficulties in the implementation of the newly adopted legislation on Free Access to Information (Law No. 544/2001).

We will describe briefly the main provisions of Law No. 544 concerning its relevance to conflicts of interest. Law No. 544 stipulates that each public institution must organize a public communications department specialized in informing citizens and conducting public relations activity or designate a responsible person to organize the public relation activities. Certain categories of information will be issued as part of the institution's public relation obligation (laws regulating their organizational structure, names and leading positions, the institution's budget and annual report, programs or strategies, and the list of public interest documents the respective institution can issue), while for other information, any citizen should write a solicitation. By public information, the law means any information that refers to, or results in the activities of a public authority or public institution. To any request for information, the public institution must formulate an answer within 10 days—the only exception being when the information requires further documentation or systematization in which case, the deadline could be extended to 30 days (during the first 10 days, the petitioner will be informed that the response requires an extended period). Refusal to answer the request, with the explanation of such a decision, should also be communicated within five days upon request. It is the public institutions' duty to hold monthly press conferences making sure the public is well informed. The refusal to issue a legitimate response leads to situations where the petitioner can appeal to the institution's leader. If the petitioner is not satisfied with the internal mechanism of the appeal, he can approach the Administrative Court (*contencios administrativ*). If his effort is successful, the Court can order the respective institution to issue the requested information while covering the moral and personal damages of the petitioner. Such a trial is free of charge and conducted with priority. Special provisions for media access to public information are included, information is to be provided in no more than 24 hours, unless there is an additional justified need for further documentation, a situation that will be communicated to the media petitioner.

Along with the adoption of Law No. 544/2001, the whole spectrum of public institutions has been involved in complex institutional reform, learning new techniques on how to manage information and communicate it to the public. Many cases of malfunction are generated by a lack of client-oriented information management. The opportunity created by the Law on Access to Public Information made the public institutions more vulnerable to the scrutiny of citizens seeking public information. The old culture of keeping public information from the citizens as much as possible has been going through significant positive changes, to which many people working at these institutions have not been able to adapt. Adopting such legislation is expected to generate a change of mentality.

The situation is further complicated by the law on classified information (Law No. 182/2002), recently passed by Parliament, which creates difficulties for public officials and civil servants in dealing with the criteria of information disclosure. More precisely,

the law stipulates that any information whose disclosure could legally damage the public or private interest of a public person is categorized as confidential information. The leader of the institution is in charge of deciding what information is classified and what is public. Non-compliance with the leader's decisions in this area has criminal consequences. It is prohibited for any public institution to restrict access to any type of information that is intended to inform the public or to information which, if withheld, from the public could obstruct the legal system.

In reality, there are many situations in which confidential information is used by senior public officials to attack political adversaries. Because of the incomplete legal framework and inapplicable control mechanisms, a public official cannot be efficiently supervised if providing any privileged information to interested third parties. Whenever reported, the misconduct was not investigated and couldn't be sanctioned in any way. Withholding official information that should properly be released or providing false or misleading information are just sub-varieties of an overall poor implementation of legislation on free access to information. The obfuscation of many local governments leaves room for channelling inside information about public procurement contracts or other local government decisions to interested third parties.

The adoption of Law No. 544/2001 on access to information of public interest has not improved access in the last year. According to data gathered by Transparency International Romania,⁹ the year 2002 brought a generalized decrease in the response rate and the quality of public institutions' response to information requests, irrespective of the social or professional status of the petitioners (journalists, citizens, NGOs, etc.). Still, civil society campaigns aiming to improve the mechanisms of releasing public information, according to the new law—not only through soliciting information but also through following legal procedures—have forced many institutions to reform their disclosure policies.

It is expected that, after these first steps of the law's implementation, many more local institutions will learn to act more transparently, from the stage of deliberation to one of sharing motivations for decisions.

2.5 Using Local Government Property

There are no effective mechanisms to prevent the unauthorized use of local government property for private or political purposes. According to media reports, this is a widespread practice, which becomes more frequent during electoral campaigns. In most local governments, there are no technical means to control the use of the telephone for private purposes. Automobiles and mobile electronic equipment are also frequently used for private and political purposes.

The only legal mechanism in place is the Penal Code, which holds sufficient provisions to sanction the use of public property for personal interest. One might say that there is a common understanding that a person holding a public position is going to use that advantage. The dimension of using public property for one's private interest (or the political party's interest) depends on one's position within the public administration hierarchy. This varies from situations where regular employees frequently use the office phone for personal use, to cases where officials use the office car for shopping (or even asking the driver to shop for them), and even high officials traveling to a seaside resort by state helicopter. Although all of this is well known, and the most extravagant cases are highlighted in the media, no public sanctions have been recorded.

It is the responsibility of the internal auditor to check whether public money is spent in a proper manner, serving only community interest. In practice, very often internal audit has to find legal justifications for expenditures that don't happen to have a credible explanation. For instance, a common practice for public officials traveling in the country on personal business is to explain that their trip was motivated by maintaining professional relations with local authorities in the city of destination. In some of these cases, persons who are involved do not even hold a position to justify their trip (they may be relatives or political party officials), while the supporting documents indicate names of eligible people working for the local government.

Another common situation of the inappropriate use of local government property occurs in cases when the mayor offers various amenities, such as cars and mobile phones, to be used with no budget restriction, to members of the council, in exchange for their "cooperation."

Due to mutual consent on using public property for personal benefit, only the most extravagant cases are subject to media scrutiny.

2.6 Government Employees' Involvement in Political Party Activities

Local government employees have the status of civil servants and, consequently, their expressing political views or taking part in political activities in their capacity as public civil servants is forbidden. However, media reports show that there are cases when political leaders of local government institutions put pressure on their employees, expecting them to join a specific political party. Sometimes it is not really necessary that the leader exercise any pressure, a simple recommendation by the institution's members have the same impact. Even if one doesn't join a political party, local government employees, prompted by supervisors who are political appointees, are frequently used for partisan political purposes in performing their official duties, especially during election cam-

paings. However, it needs to be underlined that in many cases it is the public servant's decision to actively support the leader in his political activity while serving as a public authority. These situations occur often, whenever there has been a long, steady professional relationship between the institution's leader and some of the staff members, with the latter freely agreeing to be involved in political activity for the sake of their leaders' expressed needs. These types of situations require individual analysis, to carefully assess all the circumstances, before drawing any conclusion.

Still, in a normal situation, when a public servant is asked to perform an activity that is not strictly related to his job, the person has the right to complain and demand that he be not asked to do the task in question. If the supervisor still insists, of course—depending on the gravity of the demand—the public servant can complain in a written memo, while still having to carry out the respective request. These situations are more often determined by a local public authority and the individual employee rather than national practice. Other legal mechanisms someone could utilize in such situations depend directly on the gravity of a situation.

As mentioned above, politically appointed supervisors show a strong preference for the political “homogeneity” of employees in their institutions. This situation becomes more obvious during election campaigns. It is common practice that key personnel in the local administration are also members of the campaign staff of local candidates, a situation that leads to the frequent allocation of employees' office time for electoral purposes. Also, due to their preferential access to public facilities, some candidates rely on local public administration facilities while running their campaign.

Political influence for recruitment and promotion of employees within local government exists, but to a lesser extent than in central government institutions. One obvious reason is that the recruitment base at the local level (outside Bucharest) is quite limited, and the number of competent professionals to be employed is rather small, while the duties of public office are becoming more and more demanding in terms of general skills and qualifications.

Given that the political membership is often perceived by civil servants as a supplementary guarantee for job stability or for a promotion, there are cases when employees take initiatives and change their political affiliation if a political change occurs in the management of the institution.¹⁰

It should be noted though that the government has recently established a National Agency for Civil Servants whose main role is to coordinate policies, including the formation of a professional civil servants' body in Romania.

Recommendations:

- 1) Creation of a national database that includes all elected local officials and civil servants, in order to track any duplications of power or any potential conflict of interest. This data should be constantly updated.

- 2) Reducing the maximum number of personal advisors for each local public official, regulating the competence criteria when selecting personal advisors.
- 3) A more rigorous enforcement of the already existing regulations on conflict of interest at different levels of local public administrations.
- 4) Members of local public administrations should be forbidden to be employed by any of the private companies that had economic ties with their former activity. This restriction could be imposed for three to five years.
- 5) No professional relationships within an administration should be tolerated between relatives, up to the fourth degree.
- 6) Better management of confidential data, through enforcing better application of the law on classified information.

3. INSTITUTIONS AND PROCEDURES FOR PREVENTING AND DETECTING CONFLICT OF INTEREST

3.1 Disclosure Policy

According to Law No. 115/1996, local government officials have to fill out financial disclosure statements, when first employed and after the end of their term. At the local level, the following categories fall under the provisions of the law: local and county councilors, mayors, civil servants, members of managerial boards, and other managers and directors of local public utilities companies that are accountable to the local authority. There are no special requirements concerning senior public officials. The same procedure is also mentioned in Law 188/1999, art. 46 (2).

Public officials are requested to fill out the financial disclosure report 15 days after taking office and 15 days after the end of their term. The information requested covers their financial resources and assets, the financial resources and assets shared with spouses, and the financial resources and assets of children in their legal custody.

Civil servants and other employees (such as members of the executive boards and managers and directors of local public utility companies that are accountable to the local authority) submit their financial disclosure statements to the public authority that has hired them or to the person responsible for their appointment. Local and county councilors and mayors submit their statements to the prefect.

The law provides for a control commission, formed by two judges and a prosecutor from the regional Court of Appeals, in charge of reviewing the financial disclosure statements. The members of the control commission serve a three-year term. Unfortunately, the commission does not act *ex officio* but only upon receipt of a request for investigation. The request for investigation can come from the chief prosecutor of the regional

Court of Appeals or the head of the institution where the person under investigation is employed. A public official who is publicly accused of illicit acquisition of wealth can also submit a request for an investigation. Any regular citizen who holds solid information can become involved in this process by notifying the chief prosecutor of the regional Court of Appeals, or the head of the institution where the person under investigation is employed, about the presence of a public official whose property was acquired illegally.

The possibility for the average citizen to request a property investigation remains rather minimal, because the party asking for an investigation has to provide a solid, comprehensive list of proofs. The legal procedure can be inhibiting to the average citizen who holds information that he intends to submit to the court, because, if the information is not proven to be correct, the person can be liable to penalties. The control commission acts as an intermediary, evaluating the cases in a period of no more than three months, reaching one of the following situations:

- the commission sends the case further to the regional Court of Appeals, if it has strong reasons to do so;
- the commission stops the investigation if the initial proof turns out to be false;
- it suspends the investigation and sends the case to the competent regional District Attorney, if, during the investigation, other criminal facts turned up.

If the court evaluation determines that the property was illegally acquired, it can decide to confiscate it.

The biggest concern regarding the topic of financial disclosure these days is related to the provision that denies public access to this information. Although the media and civil society have already voiced their interest in learning about public officials' financial disclosure documents, there is no evidence that a regular citizen has used the legal mechanisms described above (submitting a notice to responsible authorities on the basis of which to start an investigation).

3.2 Procedures to Report Misconduct or Suspected Conflict of Interest

There is no uniform practice regarding local government employees' obligation to report misconduct of other public officials, conflict of interest situations, etc. Local governments and public institutions in general are reluctant to introduce in their internal codes or regulations any strong requirements that would exceed the scope of obligations provided for by law.

The prefect is the public official who has the legal obligation to ensure the implementation of the law and consequently to suspend a local elected official who is found to be in a situation of incompatibility.

Law No. 544/2001 on free access to information states that information that covers an illegality cannot be legitimately classified as secret; consequently, any person disclosing such information cannot be accused of publishing secret/confidential information. Although the law on civil servants and the Labor Code include regulations about abusive dismissals, there are no specific mechanisms to encourage information disclosure practices by protecting the respective person doing the reporting. Under current economic and political circumstances in Romania, the decision to disclose information that is interpreted as illegal jeopardizes an employee's professional career and position in the institution concerned.

Still, it has to be mentioned that both Law No. 188/1999 on the Status of the Civil Servant and the Labor Code provide general protection against abusive dismissal. Again, like in many previously mentioned situations, the issue is not the absence of a legal framework but its enforcement.

It is the responsibility of each public institution (at all levels) to organize its management in the most efficient manner. While writing the current report, experts learned that there were institutions in Romania that developed their own internal procedures for their employees in order to report any obvious conflict of interest. Such practices opened a new chapter in the whole debate about corruption and ways to prevent it. Experts have also learned that many employees' reaction to these procedures were not encouraging, in the sense that they perceived them as a betrayal of their colleagues, a perception which, in fact, would be impossible to explain without looking back to the communist mentality and working environment. Self-consciousness is a concept that needs to be further analyzed and explained, along with a better understanding of policies to help to decrease corruption in the future.

The general public can make use of the general complaint mechanisms that are in place in each public institution in Romania. There are no special procedures the public should follow when exposing conflict of interest situations. Following recent public debate on the issue of conflict of interest and corruption, there are isolated initiatives by some mayors, such as hotlines to report official misconduct.¹¹ Given the voluntary nature of these initiatives, there is no guarantee as to their continuity. Furthermore, anonymous reports can often be ignored by supervising institutions, whose investigations needs evidence.

Instead of using anonymity to directly expose wrongdoing to other officials, representatives of public institutions sometimes choose to give their information to a journalist who is already investigating a suspected conflict.

3.3 Other Measures Assisting Prevention of Conflict of Interest

Redress against administrative decisions is provided by means of the administrative sections of the courts (*contencios administrativ*). Any person violated in his legitimate right by an administrative act or failure by a public authority to answer his complaint within the legal term is entitled to the acknowledgement of his right, annulment of the act, and remedies for the damage.

Law No. 29/1990 on Administrative Litigation and Civil Code Procedures stipulates that appeals against administrative decisions can be filed at the Administrative Litigation Sections of the county court or in Bucharest. Appeals can be filed at the Administrative Litigation Section of the Appeals Court. The courts can nullify administrative decisions, order adoption or amendment of an administrative act and decide on compensation for damages. Law No. 29/1990 does not provide citizens with an effective means to appeal decisions of the public administration. Most of the appeals reviewed by the Administrative Litigation Sections are filed by prefects questioning decisions of the local or county councils or by mayors, who are questioning the prefects' decisions. Currently, a draft law on Administrative Litigation that would give citizens more rights to appeal administrative decisions is under discussion in Parliament.

The prefect can make a public appeal against any decision of the local administration that he/she considers illegal. Any private individual (citizen or legal entity) can appeal a decision of the local administration if he/she thinks it causes direct damage to him/her.

There is no systematic practice of risk assessment of areas susceptible to misconduct and conflict of interest, except for general conclusions that can be drawn from social inquiry instruments, such as the World Bank's Diagnostic Survey of Corruption in Romania. The last report in 2000 is an opinion-based survey that allows for identification of sectors where corruption incidents reportedly occurred more often. Unfortunately, the scope of the survey was very large, and the local government system was treated as a whole, making a sub-sectoral assessment very difficult.

In fact, Law No. 215/2001 on Local Public Administration states that an elected local official who has a "family interest" in the matter under discussion, either directly or through relatives, is under obligation to withdraw from related deliberations and the decision-making process. If this occurs, the decision can be appealed in the Administrative Litigations Section.

A large number of companies winning public contracts have important officials from the local government among their shareholders. Many public officials do not even hide the fact that they work as private managers or consultants at local companies that do business with the municipality. They justify their business practices as a financial acknowledgement of their expertise conveniently supplementing their modest salaries in the public administration.

The case of the municipal councilors in Bucharest was the most salient in this respect. However, it is important for the accuracy of this report to recall that the official legal ground for the recent suspension of the Bucharest Council was not related to conflict of interest but to a procedural problem (six successive decisions of the council were invalidated in court).

According to information released by the Public Administration Ministry,¹² in February 2002, a total of 123 local elected officials were registered as connected with private commercial companies that have business relations with the local public administration in all parts of Romania. According to the same report, as a result of the enactment of Ordinance No. 5/2002, in general, official concerns lead to the following steps for eliminating the existing conflict of interest situations:

- 24 officials have resigned from their public office positions*
 - 88 officials have resigned from their positions held in private commercial firms.*
- At the same time, 11 contracts have been cancelled.*

As was mentioned earlier in the report, the opposition parties' lists include names of local officials of the ruling party who made financial agreements with public money or who are in managerial positions in local public utility companies. The opposition offered new data to have a better picture on the dimensions of this phenomenon in Romania (573 cases were registered around the country at the beginning of 2002).

Although the leadership of political parties are aware that businessmen represent important "assets" for a party's budget, recent statements indicated that leaders have asked their local representatives to choose between politics and business, in an effort to prevent growing corruption.

One important aspect in this context concerns transparent auctions. To prevent the impression that personal contacts make it easy for someone to acquire a business in Romania, more emphasis was put on the importance of legal, transparent public auctions. According to Emergency Ordinance No. 60/2001 on public procurement, bidders who can be proven to have been involved in corrupt or fraudulent practices related to the procedure for the contract in question must be excluded.

However, it is unclear how such a provision can be effectively implemented, because the law does not provide any procedure for blacklisting companies. The procedure mentioned above applies only to corrupt practices related to the contract in question, which leaves room for that company to participate in future tenders, involving either the same or another local government.

In order to sum up all major legal provisions that concern our topic, we finally note that local governments do not play a significant role in the privatization field. Law No. 219/1998 on the Regime of Concessions, which does not stipulate any provisions concerning conflict of interest, regulates concession agreements.

3.4 Measures Used by Human Resource Management to Prevent Conflicts of Interest

General rules for personnel recruitment and promotion procedures are provided by Law No. 188/1999 on the Status of Civil Servants, supplemented by Government Decision No. 1087/2001 on the Organization of Contests and Examinations for Public Office Employment. This Government Decision states that the recruitment process should comply with the principles of open competition, merit-based selection, and transparency of contest organization, equal opportunities, and confidentiality of personal data (art. 1). According to Government Decision No. 1087/2001, the National Agency for Civil Servants is responsible for the methodological coordination, monitoring, supervision, implementation and compliance with the selection procedures by public authorities (art. 55).

A general framework for the evaluation and promotion of civil servants has been prepared by the National Agency for Civil Servants. At the present time, promotion procedures are based on the application of a professional evaluation grid. Some of the criteria in the evaluation grid are described as leaving room for unusual or even arbitrary practices, independent experts say.

According to Law No. 188/1999 on the Status of Civil Servants, the recruitment and promotion of government employees must be based on merit and professional competence, which are to be judged by means of a standard evaluation procedure. With few exceptions, the rules regarding openness of selection procedures are generally observed. Government Decision No. 1084/2001 introduced the standard methodology for evaluating individual professional performance. Employees have the right to contest the evaluation if they consider it unfair. Each institution has the autonomy to evaluate its employees and can also have direct consultations with experts from other national institutions (these frequently involve Labor Ministry experts). If any public servant raises complaints, the National Agency takes part in the resolution process.

The strictness of national monitoring of the selection process decreases according to the size of local governments. One very important, but also problematic, step concerns the public announcement of vacant positions in a way that any interested party will learn about the job and apply. “Public locations” had various meanings for different institutions/persons. By purposely posting the announcements in an area difficult to access, officials could hinder citizens’ access to information.

There are cases when publicizing vacant positions in a public location is interpreted in a manner that hampers access to that information, because an intention to “fix” the selection procedure exists.

Despite the need for autonomy, it is very clear that local public institutions in Romania need to constantly consult with the national institutions in charge, both when hiring new personnel and when evaluating their performance. The National Agency for

Civil Servants will offer consultancy and assistance for good human resources management. More assistance will also come from the public training institution, whose role in the preparation of public servants and officials is expected to increase.

3.5 External and Internal Control Supporting the Prevention of Conflict of Interest in Local Public Administration

Exercising control in Romania involves a variety of actors, from the specialized control departments of ministries, the Ministry of Finance included, to local and/or internal specialized units in local public administrations. There is the National Audit Court, whose inspectors exercise control of public funds (local administration included) but also a Prime Minister's Control Department, whose area of competence covers institutions directly accountable to the government and other institutions as well. The creation of the Prime Minister's Control Department didn't become an issue until its representatives started to exercise control at the level of local public administration units. At the same time, although its leader constantly advocated that the department should follow no directives other than the law, analysts concluded that its political role and its decisions are quite effective. As Romania gets closer to accession into the EU, the fairness of EU fund management becomes a crucial priority for the government. The Prime Minister's Control Department has direct responsibilities in supervising the EU projects implemented in Romania, being the OLAF contact institution for EU projects. A better definition and separation of roles of all these control mechanisms would be very useful, especially during the current legislation revision process that Romania has been going through these days.

As for legislation, as was already mentioned in the first chapter of the report, Romanian legislation mainly covers the typical conflict of simultaneously held positions at administrations and institutions or private companies. As far as local government is concerned, the most effective tool of enforcing these prohibitions is the mutual oversight of different, competing political parties represented in local and county councils.

It is thus becoming crucial, for the sake of the autonomy of Romanian public administrations, to have a clear description of the supervising institutions' responsibilities, as well as their supervising mechanisms. Controls exercised at the local level should no longer be interpreted as a "political pressure tool," as mayors delegated by opposition parties have recently complained.

Each local public authority has an internal control department and internal control procedures. Internal audit and financial control units of local governments' representatives are in the best position to detect potential conflict of interest situations under their authority. None of these situations can be reported and acted upon if they are not explicitly defined as conflict of interest situations by effective legislation.

Besides the internal control mechanisms, external financial controls exerted by the local financial control departments of the Ministry of Finance cover some aspects of conflict of interest situations. Their main responsibility is to prevent poor financial management that might include, for example, irregularities related to public procurement procedures and the use of public property for personal gain. At the same time, a local authority often receives visits from the control departments of different ministries, i.e., inspectors from the Ministry of Health, the Ministry of Environment, or the Ministry of Transportation, if specific projects are under their authority.

It is not the aim of this report to describe the local budgeting process in Romania, but one aspect is very important for the accuracy of the control mechanisms. Representatives of the control departments of different ministries target “special funds” expenditures (the funds that are allocated by a ministry, that come in addition to the annual budget allocations to a local authority, and that have a clearly defined purpose).

The National Audit Court plays a very important role in this context. Media reporting about the activity of this institution mainly refers to its control at the level of the central government. Yet, the National Audit Court exercises controls at the local level as well. Given the actual legal framework, which was rather lenient toward various types of conflict of interest, the National Audit Court could not be very effective in exposing them. Unfortunately, the independence of the Court of Audit is periodically challenged by attempts of the ruling parties to influence the appointment of its officials (at the national level or for their local branches, such as at the county level), and at times they even use pressure on the court to intimidate or hassle local administrations run by officials belonging to opposition political parties. At the same time, because the number of local inspections has increased lately, mayors who would prefer not to be inspected have complained publicly about too many “visits” by the National Audit Court.

When it comes to the relationship between the public institutions that are most frequently involved in inspection activities at the local level, it needs to be noted that neither the National Audit Court, nor the Prime Minister’s Control Department has a legal basis to issue recommendations to individual public institutions.

The Prime Minister’s Control Department has already been involved in inspection activities in a number of local communities (Bucharest, Cluj, Giurgiu). Its local inspections were highly criticized on the grounds of Local Autonomy Charter provisions. Also, those who criticized these practices referred to the Romanian legislation that stipulates that the Prime Minister’s Control Department area of competences mainly covers institutions directly accountable to the government. According to Law No. 215/2001, the authority that oversees and controls the application of the law at the local level is the prefect. Consequently, the role of the Prime Minister’s Control Department is to supervise the inspection activity performed only by the prefect at the local level (dealing with any local communities within the respective county). In this respect, the responsibilities of the PMCD should be further clarified, so that there will be no

misunderstandings as to what other institutions than the ones directly accountable to the government can or cannot be inspected.

One particular example could be very helpful in clarifying the place of the Prime Minister's Control Department in the whole spectrum of the supervisory institutions in Romania. In December 2001, there was an *ad-hoc* politically generated¹³ situation in the Bucharest Municipality when an inspection of the Prime-Minister's Control Department identified a series of economic conflict of interest situations in the Bucharest General Council. However, one can consider this situation atypical and more relevant to the political dispute between the government and the opposition mayor of Bucharest, especially when taking into consideration that the PMCD has no clear jurisdiction over the local public administration. The involvement of the Prime Minister's Control Department had an important meaning, its visibility raising the public awareness of the subject. The role of this department in relation to other control units at the central government has been intensely disputed lately.

The role of the institution of the Ombudsman is rather negligible in this respect, although this institution has the legal basis for making investigations and issuing recommendations to concerned institutions. As for other public institutions, the Ombudsman only takes action following citizens' complaints about infringement of their constitutional rights by public authorities. So far, no such complaints have indicated conflicts of interest as reasons for such infringements.

The mission of institutions (exercising control) is very delicate as it directly concerns the topic of self-autonomy. Political interference in the administrative decision-making process at the local level was harshly criticized, both in Romania and abroad. Especially because such suspicions exist, the control mechanisms need to be transparent, well synchronized, coherent, and well intentioned, in order to really prevent any potential conflict of interest and to sanction existing conflicts.

3.6 Accountability and Responsibilities of Local Government Officials for Activities Generating Conflict of Interest

The attitudes of political parties regarding their representatives perceived as corrupt are not very coherent. Initially, the parties adopted a defensive strategy, trying to dismiss the reports of alleged conflict of interest/corruption as "politically motivated attacks." When media and public opinion pressure exceeded a certain level, and the public perception of the party was severely damaged by the association with such persons, the withdrawal of political support was more carefully assessed. In fact, there are no general rules for how political parties' decisions are influenced, due to complicated considerations of local client networks and prospects for political parties' funding.

As a matter of fact, the political parties do not have internal mechanisms (such as codes of conduct for their members) to deal consistently with conflict of interest situations affecting their members. Due to this situation, it is hard to predict how political parties respond to corruption allegations, and this also explains the fact that parties take responsibility for their members' misconduct in office not because of their internal mechanisms but because of strong external pressures. Still, a few opposition parties have recently stated that, following the Bucharest Council's economic conflict of interest scandal, they have asked their local members to choose between their public position and their private business. Their public statements indicated that internal policies were in place to sanction further conflicts. One statement referred to sanctions such as withdrawing political support and a ban on the implicated person's placement on the party's election list.

While the responsibility of individual elected officials for their own conflicts of interest is more or less clear to their voters, the Romanian electoral system (based on party preference voting) makes it very difficult for voters to prevent particular corrupt councilors from getting into office at the next election, if their political parties do not withdraw their support and remove these councilors from the candidates' lists. A mayor who is elected through direct vote is more exposed to being accountable to the public but, as elections results have shown, the voters do not necessarily sanction a mayor's conflict of interest if they perceive him as an efficient administrator of the community. The subordination of the local media makes public accountability even more problematic.

Another expression of a mayor's accountability to the citizens, Law No. 215/2001, stipulates that a mayor could be sanctioned by being removed through a referendum. Reasons to organize a referendum are more general, but they could be applied to potential conflict of interest of a mayor and it is clear that the law empowered the citizens with a democratic set of tools. The substantial implications of organizing a public referendum mean this option is rarely implemented in Romania. The procedure can be initiated by 25 percent of the voters from that locality, and the mayor is dismissed with the votes of 50 percent plus one votes.

In terms of misusing confidential information, the legislation is meant to prevent the abuse at all levels of public administration. Emergency Ordinance No. 60/2001 on public procurement provides weak sanctions for misuse of confidential information during the public procurement procedure, with fines ranging from the equivalent of \$150 to \$1,500, applicable to both legal and natural persons (art. 98).

Other forms of responsibility concerning the area of conflict of interest are not sufficiently regulated by the legislation. As was repeatedly emphasized in this report, the Romanian legislation only covers prohibitions of holding public office in conjunction with other jobs and positions, either public or private (so called "incompatibilities," which encompass only a fraction of what is here designated as "conflict of roles"). Usually such situations are easily clarified at the beginning of someone's term in office.

Finally, there are no forms of professional responsibility for local government employees in conflict of interest situations. Actually, the regulations on professional responsibility are specific to each professional organization (such as medical doctors, lawyers, accountants, etc.) that has an interest in developing them.

3.7 Extralegal Instruments to Prevent Conflicts of Interest

In general, the simple adoption of codes of ethics is not perceived as an effective mechanism to prevent conflict of interest or corruption. But application of an internal code of procedure/code of ethics certainly has a positive impact on the internal management of an institution. Sectors as a whole can function better if internally developed regulations are in place. This explains why sectoral groups, such as public servants and even elected local officials, have drafted their specific internal regulations. How efficiently they function is hard to say, but their role in the way of better management of their respective field should be emphasised.

Training could be another method through which to further efforts aimed to prevent conflicts of interest. Education and training on conflict of interest issues will become more effective when a satisfactory legal framework is in place, which is a task still to accomplish. As a matter of fact, although issues of conflicts of interest and others related to corruption are well known, there is still an incipient understanding of how they could be better approached through training courses, in order to prevent their further increase.

As far as formal education in political sciences and public administration is concerned, corruption-related issues are approached in few courses and seminars. The two Political Sciences and Public Administration faculties in Bucharest confirmed that the topic of corruption and conflict of interest is approached only as part of a larger curriculum on public administration reform. Class discussions and student interactions are very much influenced by the personality and vision of the teacher. In some cases that the coordinators of this study have researched in each of the two Bucharest faculties, it was clear that the teacher is instrumental in exploring the various topics related to conflict of interest. There are no courses that target the corruption phenomenon, although it often comes up in class presentations and seminar discussions according to one teacher.

Still, both public administration sections within the faculties in Bucharest admit that the topic needs further attention and careful preparation, along with their own teachers' expertise, to educate students. The National School for Political and Administrative Studies have already made some progress: One course on the topic of public servants' responsibility is only one of the first concrete steps, but other new courses have yet to emerge.

Later on, in interviews with the Public Servants National Agency about their training curricula and on-going public servants' preparation, we have noticed that there is a consultation mechanism in place (although not systematic) between this institution and the two faculties in Bucharest. Similar consultation mechanisms involved the faculties in the country. These consultations were frequent in the past, but they are presently suspended upon the inauguration of the Institute for Public Administration. The new institution's role in the domain, as well as its training arrangements in relation with other state and private providers, is being redeveloped.

There is no doubt that one of the most interesting entities in the public administration training area is the Institute for Public Administration—National Institute of Administration. Its role is to improve the skills of public officials and civil servants and to offer specializations in their areas of interest. INA will train future members of the public administration at all levels, with this training becoming one important condition for being accepted in an executive position.

Legally established in the summer of 2002, IPA—NIA (INA—in Romanian) is presently going through a very complex consolidation stage, many of its challenges coming from the still emerging curriculum and instructors' portfolio. Another very important task INA is currently dealing with involves clarifying the role among other former state training providers as well as sufficiently defining final courses granting certificates: a situation that has raised the concern of the state public universities (especially in regard to the two-year diploma that can be acquired with the public university's master's degree).

In general, the most important providers of training for civil servants in Romania so far have been the non-governmental organizations and the National Development Agencies, but very few topics discussed were directly related to conflicts of interest and corruption. Finally, it is important to mention the role that the NGOs have been playing in recent years, since they are the only training providers for both elected officials and public servants. Apart from the traditional training curricula on project management, public relations, time management, etc., NGOs have recently started to offer training on other current and critical topics, such as the implementation of Law No. 544/2001 on free access to public information. The new anti-corruption legislation is expected to further improve the NGOs' training curricula.

Recommendations:

- 1) Elaborating the necessary framework to enforce the disclosure of personal financial resources and assets. This information should be public.
- 2) Designing more efficient training curricula, to create a professional civil servant corps. Supporting better cooperation between the public administration and the education system.

- 3) Fostering institutional reform in the area of conflict of interest control by unifying the competences of all authorities in charge.
- 4) Forbidding access to any civil servant position to people who have been previously dismissed on disciplinary grounds. This restriction should be imposed for a definite period of time (e.g., five years).
- 5) A more pronounced cooperation between public institutions with conflict of interest control responsibilities and the Trade Register Office, in order to determine more accurately economic activities that involve local public officials.

4. CONCLUSIONS AND FINAL REMARKS

Researching the topic of conflict of interest in Romania in the last few months gave us the chance to learn that there was not one single remedy for such practices in Romania but many that needed to work together effectively. Conflict of interest at the level of public administration in Romania has more and more become a critical aspect of the entire public administration reform process in the country. Its local public administration particularities are even more important in the context of the present accelerated decentralization.

It is hard to say which factor affects the current situation the most. Absence of a unique, comprehensive law on conflict of interest and, consequently, the perpetuation of the current sequential regulations, is one factor generating confusion, misinterpretation and, ultimately, superficial application of the law. Because of insufficient understanding of the terminology and the implications, regulations are at risk of remaining superficial. At present, there is no general law regarding conflict of interest, and it remains an issue that is vaguely and incompletely regulated by several pieces of legislation (Emergency Ordinance No. 5/2002 on the Introduction of Prohibitions for Local Elected Officials and Civil Servants, Law No. 215/2001 on the Local Public Administration, Law No. 188/1999 on the Status of Civil Servants, Law No. 78/2000 on Preventing and Combating Corruption). Moreover, the concept of “conflict of interest” itself is a recent acquisition of the legal, political and administrative vocabulary, its being predominantly used in the private corporate sector. As a result, the only kind of conflict of interest recognized in the Romanian legislation is the most evident and non-problematic one, namely simultaneously holding a public office with other private or public jobs or positions (“incompatibilities”). Therefore, regulation to prevent economic conflict of interest is still in its infant stage.

Only after establishing all principles in one unique law, should sectorial regulations be drafted in order to address all sectors’ specifics and requirements. Stating the rules and obligations clearly should be the top priority of the leaders of public institutions at all

levels. In Romania, the content of procedures and internal rules are highly dependant on the provisions of the specific laws. As a general rule, there is a reluctance by high public officials and managers to impose internal regulations that exceed the legally binding provisions. This is what makes the general legal framework regarding conflict of interest extremely important, but it also gives little room for expectations that local institutional initiatives could outweigh the failures of the legal framework. Following the legislation spirit and principles, institutions in different domains need internal codes of conduct applicable to their members' specific activity. Equally important, if not more so, are the recent intentions of the local elected officials to establish their own codes of conduct (*Codul aleşilor locali*), which suit their particular needs and help create a professional body of elected local officials.

The inexistence of unique legislation is definitely an obstacle for the institutions' leaders in their efforts to build a professional staff, but the most efficient tool for them would be good internal management. For that, each institution leader needs to know his staff and the organization's culture, providing it with an internal code of conduct which helps consolidate the institution's ability to respond to the community's needs in the most professional way possible. The internal code needs to be complemented with other internal regulations, such as a human resources management strategy, in order to professionalize the public institution's performance.

Managing conflicts of interest, both in terms of development and implementation, cannot be dissociated from the rest of public administration reform and, some people say, from the rest of Romanian society's transformation. There are other very important areas, such as transparency at public institutions (starting with the transparency of the decision-making process), that need to evolve following a similar timing. A comprehensive law on conflict of interest should be accompanied by revision of other sectors, such as of the electoral system, in order to empower the voters to sanction politicians' misconduct. New regulations of political parties' on funding are expected to bring more transparency in the area of political sources of finances. Equally important is the enactment and adequate implementation of a draft law on transparency in the decision-making process, to increase public scrutiny and the capacity of local interest groups to transparently influence the decision-making process. Another general regulation that could have a high potential for preventing conflict of interest in the area of public procurements is Government Ordinance 20/2002 on Electronic Public Procurement, presently concerning only the central government agencies. Enlarging its area of applicability will certainly bring more accountability at the level of local public administration.

In short, because there is no single ideal solution to regulate conflicts of interest in Romania, the report has identified several options that policy makers could take into account before reaching decisions.

Three possible types of legislation have been identified and their respective advantages and shortcomings emphasized.

- A) *Enacting a general law applicable to all (elected and appointed) holders of public offices and to all branches and levels of the state* (MPs, public officials and civil servants in central and local public administration, magistrates, etc.).

The benefits of such a solution would be uniform regulation of conflict of interest and the possibility to rule out the risk of omitting specific categories or delaying the adoption of regulations pertaining to specific categories. Its obvious shortcomings come from the higher probability of neglecting the specificities of certain categories, which can bring about poor enforcement and inefficiency in particular cases.

- B) *Enacting special laws for each category of public office holders.* The exact nature of such special laws can vary according to each professional category: There can be special laws, or sections of special laws, regulating the organization (in the case of magistrates, Court of Audit officials, Constitutional Court, Government and ministries, etc.) or status of other categories (Members of Parliament, elected local officials, civil servants, etc.).

The advantages of this solution come from the possibility of taking into consideration the specifics of all particular categories. At the same time, its shortcomings consist in the likely omission of certain categories (especially when they are not numerically significant or they are able to push a strong lobby against conflict of interest regulation), on the one hand, and in the high risk of providing inconsistent solutions to similar situations across different categories, on the other.

- C) *Enacting a general law, which provides principles and provisions common to all categories and which can be supplemented by subsequent special regulations whenever the particular categories require it.*

This solution combines the advantages and rules out the shortcomings of the previous two solutions. That is the reason why it is our main recommendation in terms of legislative technique regarding the forthcoming regulation of conflict of interest.¹⁴

Insufficient political commitment could be another reason for the present high incidence of conflict of interest in Romania. Drafting the legislation is very important, it creates the basis for future actions to be developed, but enforcement is crucial as well. The more complex reform is, the more important the political will becomes. Development of successful public policies to prevent conflict of interest in the Romanian public sector continues to be a difficult task. The fundamental obstacle that has to be overcome is the still insufficient political will to build a fully professional civil service corps, protected from abusive political control. A more definite separation of the political decision-making

process from the regular administration still needs to be achieved, through change at both the constitutional and special legislation level.

As far as the political commitment to enforce the necessary reforms, Romania is so far no exception. Political will is interconnected with the firm and consistent application of the necessary decisions and, obviously, with a consistent political capacity to implement such reforms. The two different approaches, the one of the 1996-2000 administration and the current one, as regards the conflict of interest and corruption, are different and, for that matter, very interesting to emphasize in this context. Also, it is important to mention that some of the legislative initiatives of today were first raised before 2000, which makes it possible to underline the importance of political continuity that such complex reforms need in order to succeed.

Some other legislative initiatives were of course new, in response to the developments of the phenomenon. Continuity is one important element for a successful reform in all domains, and in the ones directly concerning political interests in particular. Still, there are also fundamental differences in the approach between the two administrations. A short description of these differences will explain better the role of political commitment. The 1996–2000 administration stated that corruption was one very important priority. On the belief that fighting corruption should first involve all actors in a community (policy makers and civil society), former President Emil Constantinescu personally led the anti-corruption campaign. Committees were formed both at the national and local levels. As ambitious as this effort was, the distance between discussion and delivering concrete results remained significant.

The less politically complicated government elected in 2000 has also made it a high priority to deal with corruption at all levels. Drafting the legislation was the first step to address it: The government recently stated that a document of about 150 pages on corruption (and many other domains included) was created in March of 2003. Since the public was only given five days to review the document, analysis and to make recommendations (we will later explain the procedure and the reasons), the interested independent parties found it impossible to deliver any analysis. Opposition parties were also concerned with conflict of interest and corruption issues, and they released their own bills. The National Liberal Party had its own bill (its approach being very comprehensive, drafting one single law to regulate the conflict of interest), so did the Democratic Party (with a more narrow approach, proposing different regulations for the central government than for local administration). Either way, the opposition has complained that their legislative initiatives were practically ignored by the current parliamentary majority.

There are two main involves regarding the current government approach of adopting this legislation.

The first one concerns the government's approach since initiating such a law. Although civil society and the opposition parties have requested an open public

debate of the bill, the government's decision was to take full responsibility (this is a so called "confidence vote" for a government bill or a program, and it allows no time for in-depth parliamentary debates; under such circumstances, the Parliament has two options: approve or reject it based on the majority of votes; rejection meaning that the government is dismissed). This procedure does not leave any room for debates on the content, and it precludes the opportunity to issue amendments.

The second concern is the question of whether the present government's procedure is constitutional or not. Despite the government's interpretation, the opposition parties have several times underlined that the Romanian Constitution does not allow a government to assume full responsibility for more than one single law (or one single program). Unifying 15 separate legislative acts under one single title: the "Law Regarding Some Measures for Ensuring the Transparency in the Exercise of Public Dignities, Civil Service and Business, on Corruption Prevention and Sanctions," was perceived as an intentional misinterpretation of the Constitution by the government.

Five new laws (Transparency of Budgetary Debts, Transparency in the Administration and Promotion of Information and Public Services through Electronic Means, Preventing and Fighting Crimes using Information Technology, Conflict of Interest and Incompatibility Status in the Exercise of Public Dignities and Civil Service and Economic Interest Groups) and 10 already existing ones are targeted to be amended through one huge government legislative act. In an effort to target all implications of corruption, the government also included laws that do not fit the same category. Many critics voice opposition to this legislative package because of inconsistencies between chapters and provisions and vague definitions. One strong critique concerns the unconstitutional adoption procedure.

When looking at the government's recent anti-corruption legislative approach, one separate and important observation is that the bill on the civil servant code of conduct was not included. There has been continuous debate on whether to include it or not. At one point, it was decided to include the code of conduct to regulate all dimensions of the public administration representatives but, all of a sudden, it was taken out. As for civil servants, the secondary legislation related to Law No. 188/1999 on the Status of Civil Servants needs to become an urgent priority.

Predictions about whether the package will finally be submitted to Parliament and about the future implementation course are hard to predict. Effective implementation of the legal framework has always been a major problem for Romanian public administration, due to a generalized lack of administrative capacity, especially in smaller local governments. Given that strengthening administrative capacity is a priority of Romania's EU accession process, any recommendations should take into account, and conform with, EU-driven programs in this field, as these programs are a major source of funds and technical assistance.

As far as political commitment is concerned, we need to underline that political commitment that really moves reform should not be interpreted as political interference with the administrative decision-making process. It is important to stress this, especially in the current political environment in Romania, where legislators are often suspected of politicization of administrative acts. It is a matter of jurisdiction to take the necessary actions whenever conflict of interest and/or corruption occurs. Jurisdiction needs to be independent and to act independently.

Because the laws' application is still an important weakness in Romanian public reform, and in Romanian society in general, the recent adoption of anti-corruption legislation is a very important challenge both for those in charge of implementing it and for civil society, whose help in monitoring the implementation is crucial. Developing legislation and implementing it are sometimes not enough. Young democracies like Romania's need to revitalize civil society to consolidate its skills to constantly monitor the application of legislation at all levels and under all circumstances. Along with legal and implementation procedures reform, society as a whole needs to change; the public servant-citizen relationship has to be transformed, among other things, in order to really achieve the consolidation of a transparent, corruption free democracy in Romania.

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- ¹ Art. 13 in Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on the Code of Conduct for public officials.
- ² Transparency International, Corruption Perception Index 2002, <http://www.gwdg.de/~uwwv/icr.htm> (accessed January 7th 2003).
- ³ Joel S. Hellman, *et al.*: *Measuring Governance*.
- ⁴ Joel S. Hellman, *et al.*: *Beyond the 'Grabbing Hand'*.
- ⁵ Art. 62.
- ⁶ Interview with MP Viorel Coifan, Member of Parliament.
- ⁷ Conflict of interest and even alleged corruption surrounding the operations of football clubs, where important officials from local and central government are involved, prompted Prime Minister Adrian Nastase to make an appeal to politicians from the Social Democratic Party to refrain from involvement in such situations.
- ⁸ See: *Perception of corruption...*
- ⁹ See: *The Role of the People's Advocate*.
- ¹⁰ For instance, the employees of the Sixth Sector of the Bucharest Municipality changed their political affiliation several times in order to meet the mayor's political orientation.
- ¹¹ An example of such initiative was the hotline introduced in the year 2000 by the mayor of the First Sector of the Bucharest Municipality.
- ¹² REF/RL, 26 February 2002 News Bulletin.
- ¹³ The open debate on the conflict of interest in the General Council of the Bucharest Municipality was actually an unintended consequence of this control action. It was triggered by the Bucharest mayor, a leader of an opposition party, who decided to present in the media the widespread conflict of interest affecting the municipal councilors. This decision was determined by his suspicion that the conclusions of the investigation of the Prime Minister's Control Department will be politically biased.
- ¹⁴ This solution was advanced during a public debate organized by the Institute for Public Policy on February 4, 2003.

Conflict of Interest in Russian Local Government: Challenges for New Legislation

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1. INTRODUCTION

In Russia there is a consensus that “Russian local self-government has come of age.” Its roots lie in the Soviet era, when there was a concentration of central state power at all levels of government, and local self-governance wasn’t even considered. Once the single-party system came to an end and different forms of property appeared in the early 1990s, the question of decentralization of power arose naturally. The legislative institution of local self-government emerged at the higher level of government, as a response to challenges related to the drastic changes in the political and economic system in Russia. The appearance of local self-governments is one of the major aspects of the transition to a democratic culture based on a plurality of interests. A natural attribute of this process is the appearance of circumstances favoring conflicts of interest in all areas of public life and social institutions.

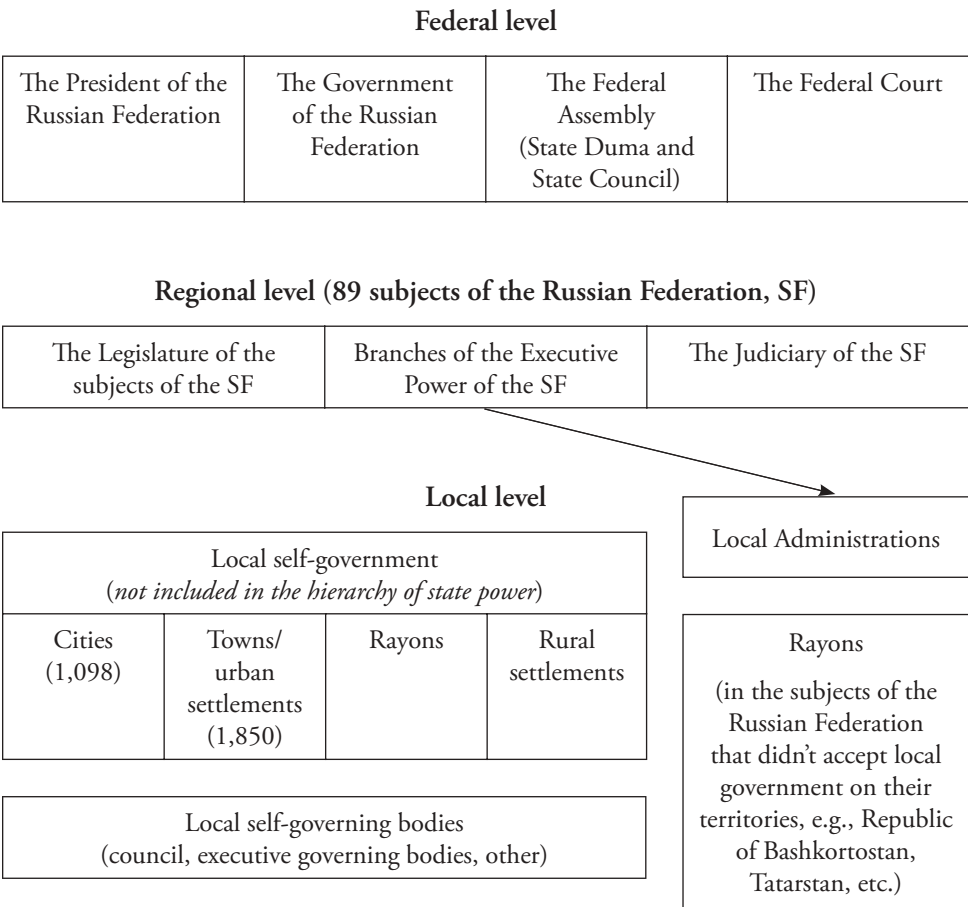
Events of recent years in Russia show numerous examples of a struggle for authority, power, and resources between the federal government and regions, regional leaders and institutions of local government, parties and social movements, and administrative agencies and citizens. According to polls, most of the conflicts arise in the division of power between different public bodies. The reason for such sharp conflicts in this area is the direct link between the distribution of power and budget allocations and financial security. In other words, issues of authority are issues of power.

As the purpose of this project is the analysis of legislative acts regulating conflicts of interest at the local level in Russia, we will limit ourselves to the consideration of such conflicts when the subjects of conflict are officials of local self-government (the heads of local administrations and divisions of executive authority, deputies of the local legislature, and municipal employees) and the objects of the conflict are the competencies in the sphere of municipal management and resources (material, intellectual, etc.). A substantial part of such conflicts is due to a clash of political, legal, organizational and administrative interests. Factors influencing the emergence of conflicts of interest at

the local level include local mass-media, public opinion, and the degree to which local civil society has developed.

Any conflict is essentially subjective, as it arises when a person or entity recognizes their interests and objectives. Consequently, conflicts can be resolved only by a conscious effort of the concerned parties. At the same time, conflicts in the area of government—both local and state—have a particularity. They begin and conclude in legal form and are tied to the legal relations of the parties. Therefore, both the subjects and objects of conflicts in this area have legal attributes, and the conflicts entail legal consequences.

Figure 6.1
Levels of Public Authority in Russia (as of 1999)



2. SURVEY OF THE RUSSIAN FEDERATION LEGISLATION REGULATING CONFLICTS OF INTEREST ON THE LOCAL LEVEL

2.1 The Evolution of Modern Legislation on Local Self-Government in the Russian Federation

The establishment of a legal framework to develop and operate local self-governments in Russia belongs to the joint competence of federal and regional authorities. The law on establishing local self-governments on the territory of the Russian Federation first appeared in the new Constitution of the Russian Federation in 1993. In Chapter 12, local self-government was defined as an independent institution that is not included in the system of government. Chapter 8 of the Constitution determines the basic functions and competences of local self-governments.

At the same time, separate elements of a legislative framework for local self-government were commissioned in 1991—soon after the formation of the Russian Federation as an independent state. The first basic law in this area was Law 1550-I of the Russian Federation published on July 6, 1991 “On local self-government in the Russian Federation.” This law defined the primary responsibilities and competencies of the local government, as well as its structuring in accordance with the constitutional standards effective in Russia at the time. In October 1993, many regulations of the relevant law were limited to the standards incorporated in the Decree of the President of the Russian Federation, No. 1760, “On the reform of local self-government in the Russian Federation.” The new basic law on local self-government took effect in August 1995; the legislative regulation of the municipal level of public authority was based on the 1991 law, which was harmonized with decrees issued in 1993.

The basic legislation on local self-government in Russia was established in federal Law FZ-154 “On the general principles of the organization of local self-government” of August 28, 1995 (from here on FZ-154). In the last seven years, the law has undergone six amendments, the first one was passed half a year after the law’s adoption, and the last was proposed on July 1, 2002.

Currently, the basic principles of the organization of local self-government in Russia are determined by Chapter 8 of the Constitution of the Russian Federation and federal Law FZ-154. According to some estimates, the number of federal laws regulating local self-governments in Russia, one way or another, is around 400.

The adoption of basic Law FZ-154 has not ended the process of developing legislation for local self-government in Russia. Moreover, soon after the acceptance of this law, Decision of the Government of the Russian Federation, No. 266, “On some measures on the implementation of the federal law,” and “On the general principles of the organization of local self-government in the Russian Federation” was issued.

This law established requirements and hierarchies in the Russian legislation on local self-government.

The following major legislation on questions of local self-government was federal Law No. 138-FZ, dated November 26, 1996, “On the constitutional laws of citizens of the Russian Federation concerning elections of institutions of local governments.” The law has established the implementation of constitutional laws on elections of local authorities when there are any infringements and obstacles to the implementation of these rights (e.g., when the charter of the municipal body has not been adopted; when there is no elected representative body in the municipality; during abolition, association or transformation of the municipal agency violating effective legislation, etc.). The relevant federal law aims to preserve a balance of interests between government and society at large at the local level, and to ensure the constitutional right of citizens to be organized to decide issues of local importance.

The year 1997 marked the acceptance of major pieces of legislation, on the scope of municipal authority and on the activities of local self-government as a whole. In May 1997, the Decree of the President of the Russian Federation, No. 484, “On disclosure of income and property by officials at the state and local government level” adopted standards on effective mechanisms to prevent corruption and the abuse of administrative power at the state and local level. Even more significant was the adoption, in September 1997, of federal Law No. 126-FZ “On the financial system of local self-government in the Russian Federation.” That law established the basic guidelines for the financial system of municipalities in Russia, sources and allocation of funds of local self-government, principles of the budgetary process in municipal bodies, and financial links between institutions of local government and financial institutions. Furthermore, the law provided guarantees of financial rights for institutions at local governments.

At the beginning of 1998, federal Law No. 8-FZ “On bases of municipal service in the Russian Federation,” regulating the activity of unelected officials of local self-governments, was adopted. The law establishes the legal status of municipal employees in labor contracts with the municipalities. The law also determined the general principles of municipal service, which is interpreted as professional work performed by an unelected, professional staff. Nevertheless, the status of the elected official, the deputy of the local legislative assembly in the given federal law, has not been regulated. It is not regulated in Russia currently—neither at the level of state government nor local self-government—and it creates serious issues of authority.

As a sign of maturity of the legislative system on local self-government in Russia, the Russian Federation ratified the European charter on local self-government in April 1998.¹

The period between 1998 and 2000 was characterized by some calm in the field of developing legislation on local self-government. In this period, only one amendment to federal Law FZ-154 (in summer, 2000) was adopted. Among the elements

of the legislation concerning questions of local self-government that were adopted in this period, only the law of 1999 "On social help by the state" deserves attention. It contains guidelines according to which local budgets can be the source of government social assistance, contradicting the Constitution by blurring the distinction of authority between municipalities and state.

The big break in the legislative regulation of financial systems in local self-government came with the acceptance of the new law "On the privatization of the state and municipal property," No.178-FZ, at the end of 2001. This cancelled the old law, No. 123-FZ "On the privatization of state property and bases of privatization of municipal property." The new law regulated privatization of municipal property in greater detail. The law determines the principal guidelines of handling municipal property; it regulates conditions for the sale of municipal property; it defines the competence of institutions of local government in the area of privatization; it outlines handling of information related to the privatization of municipal property; it covers different kinds of property, such as real estate, commercial enterprises, and cultural property; and it sets the conditions and limitations for the privatization of municipal property. Furthermore, the law regulates the allocation of revenues derived from the sale of municipal property, including the state's share in the privatization of municipal or state property.

The last major amendment in the legislation on local self-government was passed in November 2002 in the federal Law "On state and municipal enterprises." In this law, in accordance with the last changes of the Civil Code of the Russian Federation, the legal status of the state and municipal enterprises as commercial organizations is established, and the allocation of revenues deriving from enterprises owned by municipal and state property authorities is regulated. Also, the law determines the rights and responsibilities of the authorities owning commercial enterprises, and it regulates the establishment of such enterprises, their management, and liquidation.

In 2003, the President of the Russian Federation submitted to the State Duma the new version of federal Law No. 154-FZ "On the general principles of the organization of local self-governments in the Russian Federation," outlining a radical reform of the system of local self-government. The draft encountered mixed reactions, both from officials in local self-governments, and experts in the field, causing heated public debates.

Along with positive, innovative proposals, the bill contains a number of basic provisions that are worrisome for the future of local self-governments in Russia as independent institutions. The main source of concern is a plan to alter the authority of local self-governments with the introduction of a two-tier system. The provisions for the changes are formulated rather vaguely, and their actual implementation is assigned to authorities accountable to the Federation, so that local authorities are put in direct dependence on regional administrations.

Nevertheless, the bill was passed by the Duma in the first vote, and it will be enacted with some minor amendments. Under present circumstances, the law will take effect in 2005 the earliest.

2.2 Legislative Description of Conflict of Interest

The term “conflict of interest” is a concept rarely appearing in modern Russian legislation.¹ According to the provision in the appendix to the Decree of the President of the Russian Federation “On the statement of the general principles of official conduct of civil servants,”² conflict of interest is a situation when personal interests influence officials at the state level of the Russian Federation, officials directly accountable to the Russian Federation, or elected municipal officials in the performance of their official duties.

Legislative regulation of conflicts of interest at the local level is to some extent determined by the following Federal laws:

- “On the general (common) principles of the organization of local self-government in the Russian Federation”;
- “On maintenance of constitutional laws of citizens of the Russian Federation to elect and be elected in institutions of local government”;
- “On the financial system of local self-government in the Russian Federation”;
- “On municipal service in the Russian Federation”;
- “On public service in the Russian Federation”;
- “On mass media”;
- “On political parties”;
- “On state and municipal enterprises.”

Regulation of conflicts of interest is based on municipal legislation of the Russian Federation at the local level, the charters of municipal bodies, and the statutory acts of institutions of local government that cover the rights, responsibilities, authority and accountability of elected officials of local self-government and municipal employees.

Direct regulation of conflicts of interest is contained in the above-mentioned Decree of the President of the Russian Federation, applicable to officials of the Russian Federation, regional officials accountable to the Federation, and elected municipal officials.

One of the most fundamental problems of the Russian legislation on conflicts of interest in local self-governments is the absence of provisions applying to elected officials in local self-governments. Although a draft law to close this administrative gap was developed in 1998, and passed by both chambers of the Russian parliament, it was vetoed by the president of the Russian Federation, Vladimir Putin in 2000.

One more disputed area of legislation on local self-government is the absence of regulation on competitive bidding for municipal contracts. In spite of the fact that the law “On financial and economic bases of local self-government in the Russian Federation” contains mandatory guidelines on procurement procedures based on competitive bidding, there are no regulations on implementation of these provisions.

Furthermore, there are serious problems due to the absence of detailed anticorruption legislation. In Russia, there is no legal framework for the implementation of regulations on anticorruption at the local level, despite some initiatives in this area. The majority of experts hold the opinion that fighting corruption at the legislative level does not require tougher criminal legislation but rather detailed legal regulation of the decision-making process of municipal authorities on economic activity. There should be precise provisions on the competence of authorities and individual officials.

Within the framework of the Soros Foundation's project titled "Preventive maintenance of corruption in institutions of local government in the Russian Federation," the Russian experts have developed "The code of ethics for officials of local self-government," which is a policy recommendation, but not legislation. There is also an international law, "The European code of behavior of local and regional elected representatives." A political party, "The Union of the Right Forces," distributed the European code of ethics among the branches of government in Russian cities and among officials of other local self-governments. In a number of cities (Izhevsk, Gatchina, Kaluga, Obninsk, etc.) representative bodies of local self-government, having accepted the recommendations of the party, initiated the signing of the code by representatives of municipal authority.

As a whole, despite some progress in local self-governments and other areas of government in Russia, it is necessary to further investigate the extensive presence of conflict of interest at the local level. In the following sections, we will discuss in detail the reasons for conflicts of interest, and we will offer practical proposals for their prevention.

3. REGULATION OF ORGANIZATIONAL AND STRUCTURAL CONFLICTS OF INTEREST

3.1 Conflicts Related to the Structure of Local Self-Governmental Authorities

In current municipal legislation, the division of competencies is vaguely regulated. The federal Law 154-FZ, regarding the division of power between branches of local authorities, does not establish clear guidelines between the institutions of local government, giving regions the right to adopt their own regulations in regional laws. Consequently, the overwhelming majority of regions in the Federation do not have any restrictions on overlapping competencies in local self-governments.

Currently, in 75 percent of local self-governments of the Russian Federation, there is a prevalence of overlapping authorities at the highest levels of local self-government (see Appendix). Frequently the authority of the head of an administrative body is not clearly separated from that of the head of the legislature. As a result, elected

representatives of local self-governments are subordinated to the executive branch. Under these circumstances, the control function of a representative body is essentially weakened; control of top officials in local governmental institutions is absent. This can encourage the abuse of power. The fact that legislative activity in such conditions is not subject to the approval of elected officials (and thereby to the local constituency) but rather to an executive who is not necessarily elected can form a powerful basis for conflicts at the local level.

The problem of concentration of executive power in the hand of one official is fraught with the most serious consequences in large cities, where an executive with significant control over financial resources combines the posts of the head of the local executive branch and of the representative authority. Examples of large municipalities where the mayor (chief executive body) is also the chairman of the legislative assembly include Izhevsk (Udmurtiya), Orenburg and Orsk (the Orenburg area), Irkutsk and Bratsk (Irkutsk area), Astrakhan, Belgorod, Kostroma, Kurgan, Rostov-on-Don, Samara, Stavropol, Khabarovsk, and Chelyabinsk. (see Table 6.1) The selected analysis of charters on municipal bodies at the level of regional centers and large cities in the Federation shows that clear separation of the representative and executive branches of local self-government occurs in less than 50 percent of municipalities (see Table 6.1).

Table 6.1
Power Allocated to the Mayor (The Head of Municipal Government)

	Mayor (The Head of Municipal Formation)		Heading Authority	
	Elected by Population	Assigned by Representative Body	Executive	Both: Executive and Representative
Number of cities (out of 73 surveyed)	8	65	35	38

It is obvious that the demonstrated overlap of posts can result in conflicts of interest in the local and regional authorities. The conflict, and the main source of discontent, is rooted in the concentration of executive powers in the hand of the mayor at the regional level, and of large cities controlling vast financial resources. There have been cases when issues of dividing executive and legislative powers at municipalities were brought to court.

The latest and most reported-on lawsuits include the one between the Administration of the Kursk region and the mayor of the city of Kursk, concerning the right to preside over the legislative assembly of the city. At the end of October 2002, the court of Lenin of Kursk upheld the claim of the regional administration against the mayor, Mr. Maltsev. The lawsuit took eight months. Regional authorities reaffirmed their adherence to the official guidelines and demanded not only the removal of Mr. Maltsev from the sessions of the city assembly, but also a change in the city charter to separate the office of the mayor as the head of the executive branch and the head of the administrative (legislative) authority. The regional administration claimed that the city of Kursk violated the provisions on the organization of local self-government stipulated by federal Law FZ-154 "On the general principles of local self-government." In this law it is stated, that "the popularly elected head of the municipality has the right to participate in the legislation of the local self-government and preside over the sessions." In the charter of the city of Kursk, effective regulations state that the mayor "can head a representative body," which, the plaintiffs claimed, asserts a much wider authority than mere participation or "presiding over the sessions." As was noted during the legal procedure, the concept of "presiding and supervising" has no clear definition in the charter of Kursk. In the regional officials' opinion, these infringements limit the legitimate rights and liberties of the representative body of local self-government. Consequently, regional officials maintained, all institutional powers of local government in Kursk are concentrated in Sergey Maltsev's hands, and self-government by popularly elected representatives has been replaced by the government of one individual. This also violates constitutional principles. The court agreed with this conclusion, and, as a result, the charter of the city of Kursk and the rules of Kursk city assembly must be harmonized with federal legislation.

To avoid similar situations, the new bill, 154-FZ, prescribes new provisions for the functioning of institutions of local governments to replace existing ones. Its key provision is the unequivocal ban on the overlap of the posts of the head of administration and the head of the local assembly. The new law stipulates that the head of the municipality can either head the representative body or the administration but cannot combine these two offices or be positioned above them.

The election of the head of a municipality can happen either by popular vote or by the vote of the representative body. If the mayor is elected by direct vote, he can occupy either of the two offices. If the head of municipality is appointed/elected by the representative body, he can only head the representative body.

Furthermore, the new law stipulates that municipalities should be managed by a professional civil servant, while the regional (district) representative body is to be made up by heads and deputies of local municipalities. In cities that received the status of city districts, the system of mayors elected by direct vote will be kept. As for competencies at the top level of local self-government, the top executive will answer directly to the head of the region.

Reaction to guidelines for the division of power at local self-governments incorporated in the new law was not as controversial as the concept of territorial reorganization

contained in the same bill. In many respects it addresses the issue of overlapping posts, and there is a justified suspicion that those fighting for the preservation of current laws benefit from the overlap of positions at the level of local self-government.

However, it is necessary to recognize that the question of overlap of offices was unequivocally and rather accurately resolved by the new law, which is one of the most important achievements of municipal reform in Russia.

3.2 Conflicts Connected to Regulation of the Status of Officials in Local Self-Governments

In the legislation of the Russian Federation, the concepts “of elected persons of local self-government” and “municipal employees” differ. Deputies, mayors of cities, heads of local administrations, members of elected institutions of local government, and other persons who have received executive power as a result of municipal elections are considered elected officials. The term “municipal employee” refers to individuals working in institutions of local government under labor contract, and municipal service is determined in federal Law FZ-154 as “professional work on a steady basis in institutions of local government with executive authority, including the authority of elected officials.”

The status of municipal employees, the conditions and procedures of municipal service, and management of service are determined by the federal law “On bases of municipal service in the Russian Federation,” incorporated by laws of the Russian Federation and charters of municipal bodies. Furthermore, federal labor and pension legislation applies to municipal employees.

3.2.1 Elected Officials

Regulation of the status of elected persons at local self-governments is not incorporated in federal legislation. The appropriate federal law “On bases of the status of the elected person of local self-government in the Russian Federation” was developed and passed by the State Duma and approved by the Council of Federation, but President Putin vetoed it due to a conflict with the federal legislation.

Meanwhile, the absence of federal guidelines for elected persons of local self-governments is an actual problem. Currently, it is extremely difficult to prove if a city mayor, a head of local administration or his deputy is engaged in commercial activities or uses his office or community property for purposes other than his official mandate, and it is difficult to implement measures of prevention.

This situation is aggravated by the fact that, in Russia, the institution of response by elected officials in local self-governments is still in development—we shall see that

the institution of accountability to voters by elected officials at the federal and regional levels does not even exist. Federal Law FZ-154 mandates a response of elected officials to constituents. The same law establishes the forms of response that should comply with laws of the Russian Federation, and its specific mechanisms should be regulated by the charters of municipal bodies. In practice, many local governments are in violation of federal legislation and have not developed or adopted a mechanism of official responses to requests. Even though there are federal laws to recall an official before the end of his/her elected term due to loss of trust by their constituents, it's highly unlikely that such regulations would be adopted by the charter of a local self-government. This means that adoption of such regulations depends chiefly on the same elected officials to whom the regulation is supposed to apply.

The absence of guidelines regulating the rights and responsibilities of elected officials in local self-governments creates opportunities for conflicts of interest and various forms of corruption. In Russia, there are several examples of citizens trying to recall an elected official unsuccessfully, due to the lack of adequate legislation.

In the Seversk District of Krasnodarsky kray, inhabitants wanted to recall the head of the local government, who was elected by violating legal regulations. He was not really concerned with municipal affairs; instead, he pursued his own agenda, damaging the social and economic infrastructure of the area. Many suspected him of personal misconduct. But the charter of the Seversk District contained no regulations on the conduct and ethics of elected officials in the local self-government. As a result, the citizens were helpless; their appeals to the head of the region remained unanswered, since he used to work in the regional office of the public prosecutor.

3.2.2 Municipal Employees

The federal law “On the basics of municipal service in the Russian Federation” (item 11) established restrictions applying to municipal officials. A municipal employee is not eligible to:

- get hired for any other paid position except for employment in education, science and arts activities;
- be a member of the State Duma of the Russian Federation (the House of Representatives of the Russian Federation), on a member of Regional Parliament, a member of the Municipal Council; he/she is also discouraged from holding the position of elected municipal official;
- run his/her own business, or run it by proxy;
- be a member of the board of directors of commercial enterprises, except for a special appointment determined in the Statute of Municipality on the basis of federal and regional legislation;

- be a lobbyist or an attorney of third parties in the local self-government where he/she is employed;
- utilize property, financial and informational resources of local self-government for purposes other than municipal service;
- receive author and speaker fees for regular official duties;
- receive any kinds of gifts and favors from individuals or organizations (both commercial and nonprofit) as a form of compensation for municipal service;
- go on business trips funded by individuals or legal entities, except when such funding is made by a mutual agreement with other governmental agencies or nonprofit institutions;
- go on strike;
- get involved in political parties and use local self-government authorities for lobbying for political parties; the formation of political, religious, or any other kinds of public organizations in local self-government bodies is strongly discouraged, with the exception of trade unions.

There is a special article² devoted to regulation of municipal employees owning shares in commercial enterprises. Once he has assumed office at a local self-government, a municipal employee should transfer all his shares in business enterprises into trust management under a guarantee issued by the municipality to comply with federal and regional legislation.

In the federal Law “On the basics of municipal service,” and in the special Order of the President of the Russian Federation issued in 1997, it is stipulated that municipal employees, along with local self-government officials (both elected and appointed), have to provide information on their income and property, but this information is for official use only and is not available publicly. The procedure of income and property declaration should be set by a special federal law. Not all local governments have adopted guidelines for disclosure of income and property by municipal employees, even though federal legislation makes it mandatory.

3.2.3 Judges

Regulations on conflict of interest situations at the local level is incomplete without guidelines applying to the judicial system of local self-governments. Under circumstances when administrations and officials of public authority are accountable to the law, instead of higher officials, the significance of the judicial system is much greater. In Russia, administrative and technical issues of the courts, as well as personnel security and financial independence of state structures, especially at the regional level, are still to be resolved.

According to the first vice-president of the Supreme Court of the Russian Federation, V. Radchenko, Russian courts need to hire about 45,000 judges, and the current total of judges in Russia doesn't exceed 15,000. Most of the court buildings are poorly equipped: some of them even lack personal computers. Judicial documentation is done manually; therefore there are no reliable records of judicial proceedings. Nevertheless, since 1991, the number of civil cases in the country has increased from one million up to 5 million annually.

Moreover, there is an urgent need to create training programs for judges, since the majority of them graduated in the Soviet period, which had very different legal concepts of private and public law. In V. Radchenko's opinion, "the introduction of new concepts would contribute to a more effective judicial system in a time of ongoing reforms and not fall behind current legislation." In the last five to seven years, many Russian experts have raised questions of re-organizing the system of administrative courts, i.e., the courts specializing in disputes between bodies of public authority—and also between citizens and public authorities or their officials. A new organization for administrative justice could become an effective tool to prevent conflict of interest situations in Russian local self-governments.

Recommendations:

- 1) Within the framework of uniform and detailed legislation regulating questions of local self-governments at the federal level, a new federal law on elected officials has to be adopted. This law should resolve issues of the increased authority of local self-government representative bodies and define their relationship to executive powers.
- 2) In order to prevent conflicts and misinterpretations at the federal level, the problem of the division of power must be resolved between the representative and executive bodies, as well as between municipal authority and federal law, by requiring regional and municipal authorities to incorporate in their charters the principle of division of competencies.
- 3) It is recommended that Parliament adopt a federal law "On the status of elected officials at local self-governments," to place a prohibition on overlapping high executive offices. The same law should contain regulations on the authority of the top elected official at the local self-government and sanctions for misconduct or abuse of power.
- 4) Since property to provide social services was transferred from the central government to the municipalities, it is necessary to develop federal guidelines for the management of municipal property and for the municipalities' rights and responsibilities.
- 5) The responsibility concerning issues of local importance and public accountability of agencies and officials of local self-governments, should be established,

and procedures should be adopted to handle applications and complaints by local citizens.

4. INSTITUTIONAL CONFLICTS ASSOCIATED WITH THE PROVISION OF SERVICES BY PUBLICLY OWNED ENTERPRISES

One of the important questions demanding legislative regulation is that of institutional conflicts among public bodies. Economic conflict of interest in Russian local self-government management is often understood as a situation in which the interests of a municipality, as the entity responsible for social services, conflict with its interests in economic efficiency at property management.

In compliance with effective regulations, municipalities are obliged to stay as independent as possible from the conditions of the market economy. Nevertheless, municipalities frequently favor one participant of the market economy over others, a situation that results in unfair competition. This is another opportunity for economic conflict of interest.

It is important to note that some decisions of the local government can directly or indirectly put certain players in the market economy at a disadvantage. Therefore, it is vital that decisions by the municipality be transparent and that all interested parties have equal access to information on the decision-making process and its results. There is sufficient regulation of these issues in federal legislation.

In the following, we will discuss three areas of potential conflict of interest: the privatization of state and municipal property, the creation of municipal unitary enterprises (municipal corporations), and municipal procurement procedures.

4.1 Privatization of Municipal and State Property

Issues of privatization of state and municipal property are regulated by federal Law No. 178-FZ “On the privatization of state and municipal property” (from here on: FZ-178) issued on December 21, 2001. It contains precise regulations on procedures of privatization and their implementation, as well as guidelines for evaluation. The law offers a schedule for the privatization of municipal property for the current year. The actual organization of privatization of a given property is determined independently by institutions of local governments.³

The asking price for a property under privatization is based on its accounting balance and established in compliance with federal laws on appraisal.⁴

According to federal Law No. 135-FZ “On appraisal activity,” a preliminary estimate of the municipal property’s value offered for privatization is required (art. 8). According

to the same law (art. 16), the appraiser should be independent, i.e., he/she can not own a share or have other interest in the property to be appraised, and the civil liability of the appraiser should be established (art. 17).

The potential for conflicts of interest lies in implementation. In the list of 10 types of privatization determined by FZ-178 (art. 13), the most sensitive areas include:

- sale of property on auction (competition);
- sale of property by public offer;
- municipal property as the contribution in authorized investment in open joint-stock companies.

4.1.1 Sale of Property by Auction (Competition) and Public Offers

In articles 18 and 20 of FZ-178, it is determined that municipal property can be sold by auction (competitive bidding). Auctions can be open or closed. The bidder offering the highest purchase price is the winner. An auction with only one bidder is not valid. If an auction is cancelled, the municipal property can be offered publicly.⁵

In the case of a public offer, the following guidelines apply: The size of the discount from the initial asking price must be established, and the municipality must also set the period of time for which the reduced price applies, and the lowest price at which the property can be sold. The winner in this case is the bidder who first offers the asking price.

As it is regulated in FZ-178, the process of privatization of municipal property is determined independently by a municipality (art. 10.1), and any issues concerning the sale must be resolved by the committee in charge of the property's management. The law doesn't mandate an explanation from the representative authority (Duma) for its decisions. Therefore, there is a conflict between the interest of a city that wants to increase its revenues from privatization, and possible individual interests of members of the committee. Consequently, there exists a likelihood of favoring one participant over others in the auction process.

There are several ways officials responsible for conducting the competition can benefit from the process. One example is when one participant's offer becomes known to another participant before the end of the auction. The basic problem of prevention of such situations lies in the fact that no guidelines have been established for the responsibility of municipal authorities to handle confidential information at auctions.

Another scenario is when officials in charge of the sale of municipal property use their position to switch from competitive bidding to a public offer that benefits only one bidder, at a designated date. In compliance with articles 18 and 20 of the law, the property is put on public offer at a discount from the initial price, and a privileged participant will be the first to offer the discounted price.

Although appeals against such procedures can be filed in court, the result of the privatization procedure (auction, public offer) will almost never be cancelled.

An example of eliminating participants from the auction process at the state level is the case of the petroleum company "Slavneft." Seventy-five percent of its state-owned shares were to be privatized. Initially seven companies planned to take part in the auction, but five of them were disqualified by the auction committee on various grounds, less than 24 hours before the auction. As a result, there were two participants. The auction was considered valid, and since the two bidders were not motivated to compete with one another, the amount offered for the state package was much lower than expected. The starting price was 1.7 billion dollars and the final price was fixed at 1.86 billion dollars. The decision to disqualify "Rosneft" from the bidding process is now under court appeal, however, any court decision will likely leave the outcome of the auction process unchanged.

4.1.2 Participation of Municipalities in Open Joint-Stock Companies

A possible means of privatization of municipal property, as stated in FZ-178, is the transfer of property as an authorized capital investment in joint-stock companies (articles 13 and 25 of FZ-178). In our opinion, such handling of municipal property directly contradicts the primary mission of a municipality, which should seek the most effective utilization of property to provide social services of the highest quality to the general public. Investing municipal property in commercial enterprises removes municipal property from the social sphere. In addition, poor business management carries the risk of loss of municipal property through bankruptcy. Thus, there is an obvious conflict between the interest of the municipality as a shareholder in an open joint-stock enterprise (OJSE hereafter) and its mission as the provider of social services.

In Russia, where there are no well-developed market traditions, the capital investment of a municipality in an OJSE gives the commercial company a competitive advantage. Such an enterprise will be more attractive to investors, due to the fact that their investment is protected by municipal activities that are not subject to market conditions.

This is a case of protectionism, where the municipality doesn't have a vested interest in protecting fair market competition because of its investment in an OJSE.

Another potential for serious conflict of interest can occur when an enterprise in which the municipality holds interest participates in public procurement of goods and services—this is not forbidden by current laws. In this scenario, the interests of the municipality, as the body allocating limited budgetary funds to acquire the highest quality of goods and services at the most favorable price, conflict with the interests of the commercial company, in which the municipality holds ownership and which wants to maximize its profitability. Evidently, municipal ownership gives great security to a com-

mercial enterprise. Such a company can be considered as a more reliable supplier, and this can result in discrimination against other companies participating in open tenders.

Yet another area of potential conflict of interest is when the joint-stock company that shares ownership with the municipality decides to raise capitalization and attract investment. According to Article 25 of FZ-178, the share of a municipality in a commercial company must not be less than $255 + 1$ shares (the so-called “blocking package”). In order to keep the blocking package after raising additional capital, and to not harm other owners, the institutions of local government must invest additional municipal property. Thus the cost of privatized property (based on independent estimates and accounting reports) can appear lower than the amount the municipality could earn as a result of auction (competitive bidding).

Here a direct conflict of interest appears, as the municipality as shareholder is interested in the cost of privatized property that simply “covers” the required increase of additional capitalization, and not in receiving the highest possible price for the privatized property.

Moreover, such privatization contradicts common sense, since, instead of putting the revenue deriving from the sale of property into the municipal budget, the municipality simply shifts funds in the same pocket. In the budget, this will be accounted for as revenue from privatization—increasing ownership in a joint-stock company is considered income, even though no actual inflow of funds has taken place.

The disqualification of “Rosneft” from the auction process to privatize state shares in “Slavneft” (Case 3) was described above. In our opinion, disqualifying “Rosneft” from the process was ultimately fair: even though “Rosneft” was willing to pay 2.3 billion dollars for “Slavneft” shares, due to the significant state ownership in “Rosneft,” the eventual sale would have netted less than the 1.86 billion dollars in real terms, as the Russian Federal Ministry of Economic Development determined.

4.1.3 Transparency of Information

Law FZ-178 (art. 15), concerning procedures of privatization of state and municipal property, specifies that the following information has to be published annually in the media:

- planned privatization for the current year;
- a report on privatization in the previous year;
- decisions on future privatization of property.

The law regulates the structure of the report on planned privatization, and the deadline for the submission of the report is determined as at least 30 days prior to

planned date of the privatization. All conditions for the auctions are to be included in the report. Article 15 mandates the publication of auction results in a given format and by a deadline of not more than 30 days after the close of the tender.

4.2 Formation of Municipal Unitary Enterprises

The municipal unitary enterprise (MUE) is a specific form of economic activity. On the one hand, an MUE is a legal company with all attributes of an independent company, including a seal, controls, authorized capital and so forth. MUE activity is regulated by federal Law No. 161-FZ issued on November 14, 2002 “On state and municipal unitary enterprises” (hereafter: FZ-161). According to Article 8 of the law, the municipality is the 100 percent shareholder of the MUE.

The mission of an MUE includes:⁶

- management of property that is excluded from privatization, including property required for the security of the Russian Federation;
- performance of community functions, such as the procurement of certain goods and services at basic prices; the organization and execution of procurement of commodities to ensure the food supply of the state;
- activities that federal laws stipulate can only to be performed by state unitary enterprises;
- scientific and technical activities in fields related to the security of the Russian Federation;
- development and production in the field of state security of the Russian Federation.

Another feature of an MUE is that it can not share ownership and is the only entity to manage municipal property.

4.2.1 Rental of Municipal Property

As a rule, an MUE is established by municipalities to perform functions that are not commercial activities, such as supplying utilities, cleaning, and transportation. The municipality makes a decision on the creation of an MUE, it approves its charter, concludes the contract with its head, and transfers municipal property to its ownership. The functions and objectives of an MUE, and the structure of its transferred property, are also determined by the municipality (art. 8.5 of FZ-161). The value of the property transferred to the MUE is determined by an independent appraiser.

As neither the decision on establishing an MUE, nor the distribution of profit from the use of the transferred property, are subject to approval by a representative authority, there is a potential for conflict of interest.

An MUE renders social services to the population and should have a source of income for covering losses. Therefore the right to lease the property transferred to it is given to the MUE by the actual proprietor (the committee on property management on behalf of the municipality). Accordingly, the MUE as a managing agent is motivated to manage as much municipal property as possible, and lease it under market conditions with the purpose of maximizing its revenues.

However, the property was transferred to the municipality to render social services to the general public and to perform activities for the good of the community, and it is not for commercial use. Thus, it turns out, the interests of the municipality conflict with the interests of the MUE. Formally, the MUE is under municipal control, and, as a rule, it prefers not to get into direct conflict with the municipality. There are frequent tensions, nevertheless, between the objectives of the MUE and the municipality.

In the majority of Russian cities, it is extremely difficult for private individuals to find acceptable real estate under municipal authority (usually rented at below market rates) to set up a small business. In the best case, the committee managing municipal property will offer a small unequipped space on the outskirts of the city. The reason for that is that for the most part the municipal property is transferred to MUE management. Moreover, MUE appetites are expanded even to social objects.

An example is Izhevsk, where in the last 10 years, ownership of more than 80 kindergartens has been transferred from the committee on education to municipal property, which was immediately transferred for ownership by MUEs. Due to a decline in the birth rate there was a decrease in the number of young children and consequently it was economically expedient to integrate kindergartens. The real estate left after the integration was transferred to municipal property. However, subsequently, the birth rate in the city went up, and the number of children in need of preschool education increased. The majority of buildings that used to be kindergartens remained under the management of the MUEs that rented them for commercial use. There is a clear conflict here between the interests of the city as the provider of social services (including preschool education) and as a proprietor of real estate generating revenues for the city budget.

4.2.2 Distribution of Profit from the Use of Property

Another source of conflicts of interest involving MUEs is connected to article 17 of FZ-161, according to which the proprietor has the right to receive a part of the profit from the use of property transferred to MUE management.

The distribution of revenue between the owner of the property (i.e., the municipality) and the MUE is not regulated by federal law. The issue is regulated by institutions of the local government independently.

Thus, as the MUE is entitled to a share of the profit from the use of public property, it is motivated to maximize this revenue. Due to an absence of regulation on this issue, profit is distributed at the discretion of the director of the MUE, and so it can be distributed, for example, among MUE workers as bonuses. Actually, from the organization that is in charge of rendering social services, the MUE turns to a commercial company whose financial matters are not controlled by the municipality.

The municipality has no discretion over the distribution of additional income, since all its revenues and expenditures are determined by the budget and supervised by deputies. That is the reason why municipal employees favor the alternative of creating an MUE. This explains the proliferation of municipal and state unitary enterprises.

As of January 1, 2003, ownership of federal property was fixed for 9,846 federal state unitary enterprises (FSUE) and 37,081 federal enterprises (in whose ownership the state has a share). In all of Russia, they owned more than 1 million buildings, structures and sites. Most of them are commercial entities and operate as an FSUE (e.g., FSUE "Gostiny Dvor" operating the trade center, as well as FSUE "Trade Center Manezh"). While there are statistical data and mission statements for state enterprises, no surveys are available for MUEs, and this allows for their proliferation. As a rule, a majority of service enterprises are registered as MUEs, even though their activity is completely commercial.

4.2.3 The Head of the Municipal Unitary Enterprise

The head of the MUE is not a municipal employee, and works under contract. Therefore, many restrictions applicable to municipal employees do not apply to him/her. These restrictions are outlined in FZ-161 (art. 21). According to the law, the head of a unitary enterprise has no right to:

- be the founder (participant) of a legal company;
- occupy an administrative office or be engaged in other paid activity in the state bodies, institutions of local government, commercial, and noncommercial organizations, except for teaching, scientific, or artistic activities;
- to be engaged in business;
- be a privately-owned agency or a member of the board of directors of a commercial enterprise (except when it is mandatory as part of his duties as head of the MUE).

At the same time, the given law does not require the head of an MUE to make a disclosure on income and property.

The potential conflict of the private interest of the head of the MUE and the public interests of the property's owner (the municipality) is regulated by federal Law FZ-161. While the head of an MUE is considered representing the interests of the MUE, he might enter into contract with an enterprise of which he or a close relative (parent, spouse, siblings) is an owner. In such a case, the head of the MUE should be sanctioned by the proprietor (i.e., the municipality).

For this reason the head of the MUE must report to the owner of the property (the municipality) information on commercial entities in which he or his close relatives participate as shareholders, as well as on planned commercial agreements in which he might be considered a party with a vested interest. Any agreement in which the director of the MUE can be recognized as having a vested personal interest must be annulled.

4.2.4 Transparency of Information

The issue of transparency of MUE activity, and equal rights in accessing information on its planned actions, is regulated, from the legislative point of view, rather poorly.

FZ-161 (art. 27) specifies that an MUE must publish reports on its activities as stipulated by the legislation of the Russian Federation. However, relevant provisions are vague; for example, the regularity of reporting and the format of the reports are not specified.

Thus MUE activity is removed from the area of public control, and there is no supervision of the MUE's efficiency, its management of property, and the allocation of its revenues, a situation which creates opportunities to utilize municipal property for personal gain (as is described in section 3.2.2.).

4.3 Competitive Procedures for Municipal Procurement

It is necessary to understand correctly the concept of procurement of goods and services for the municipality. Many municipalities regard the system of competitive bidding for procurement as an "alternative," only one of several ways for the municipality to award procurement contracts. However, Russian legislation unequivocally requires municipalities to place municipal orders on a competitive basis. The federal Law (art. 12.2) "On financial bases of local self-government" states: "Contracts to render services to the municipality using funds from the local budget must be awarded based open competition whose conditions are established by a representative body of local self-government." The law is clear in this area, and therefore non-competitive municipal procurement procedures violate the law.

4.3.1 Areas of Conflict

Issues related to competitive bidding in municipal procurement procedures are regulated insufficiently. It is obvious that, to prevent corruption, there is a need for clear restrictions that say more than the general rules on the subject of certain officials awarding contracts to selected suppliers without competition. The federal Law “On guidelines for municipal procurement procedures” was discussed for several years, but ultimately it wasn’t adopted.

Before the above-mentioned law, municipalities were guided by legislation concerning procurement for the state: The decree of the president of the Russian Federation dated April, 8, 1997, “On primary guidelines to prevent corruption and reduce budgetary expenditures in procurement procedures for the state”; federal Law No. FZ-97 issued May 6, 1999 “On competitions to award procurement contracts for goods and services to the state”; as well as their own regulatory guidelines.

Heads of municipalities are not covered in regulations concerning competitive procurement procedures and, due to the lack of regulation in this respect, the municipal leader is not held accountable. So, the Office of Public Prosecutor, whose duties include monitoring legality in the activities of institutions of local government, does not concern itself with procurement matters by the municipality. Opponents of competitive bidding for municipal orders use the argument that their business relationship with the municipality rests on “mutual satisfaction” based on a supply-on-demand system in which transactions are not conducted using “actual money.” In this system, the administration can ostensibly place municipal orders only with enterprises that have financial obligations (debts) to the municipality, and their compensation can be written off in the municipal budget.

This system has serious negative consequences: The price for rendering an essential service is unreasonably overestimated, while other companies are excluded from competitive bidding. Thus, an administration supports enterprises that are frequently unprofitable and ineffective instead of offering a real opportunity to other prospective contractors.

In the city of Chelyabinsk, the Department for Housing and Communal Services organizes public procurements for housing maintenance and repair. Technically, companies with different forms of ownership may apply for the competition. But this competition turns out to be just a redistribution of tasks between many municipal unitary enterprises while private companies like the trust management company “Doverie” are often discouraged by the department from applying for contracts. The officials at the department claim that, unless they offer contracts to municipal unitary enterprises, the latter would go bankrupt due to a lack of revenues. And since private companies have more money, the Department of Housing and Repair advises them to look for contracts outside the realm of public procurement.

In the example of Chelyabinsk, as well as in many other cases, the preference is given to MUEs, which enjoy a monopoly in their respective fields. Similar actions by municipalities are in direct violation of the federal law “On competition and restrictions on monopolistic activities in the commodity market.” Economic theory and practice persistently confirm that any restrictions on competition contribute to the emergence of monopolies and price fixing and hamper the development and introduction of new technologies. All this is accompanied by a reduction in the quality of goods and services provided to the municipality.

4.3.2 Transparency of Information

The transparency of information on decisions and access to conditions of procurement is regulated by Decree of the President of the Russian Federation No. 395 “On measures on the prevention of corruption and reduction of budgetary expenditures in state procurement procedures.”

Federal law No. FZ-97, dated May 6, 1999, “On competition on procurement of goods and services for state needs” (hereafter FZ-97) was subsequently adopted.

Articles 11 and 12 mandate that information on competitions for government contracts must be published in the media, and these articles also determine the structure of the report. The same articles ensure that any interested party has the right to receive application documents. Participants of the competition have the right to be present at the opening of sealed envelopes and at the conclusion of the competition (art. 19).

Article 21 mandates publication of competition results and the format of the report within 20 days after conclusion of the competition.

It is possible to identify the following principal causes of weak transparency in procurement procedures in local governments in Russia:

- absence of traditions of a market economy and inadequate understanding of the value of competitive bidding procedures;
- strong lobbying at all governmental levels for personal interests, as well as large-scale merging of departments with managing agents, primarily MUEs;
- insufficient legislation on municipal procurement procedures;
- absence of an effective system to monitor municipal procurement procedures or to sanction violations of relevant guidelines concerning procurement;
- unwillingness of public authorities to consider violations of procurement guidelines as a violation of civil law (and not just administrative regulations);
- heavy budget deficits and big shortfalls by municipal enterprises against the budget.

All this creates a vicious circle: Municipal authorities tend to increase their orders with municipal enterprises, to recoup the ever increasing debts owed to them by MUEs, instead of using available budget resources for procurement under fair market conditions.

Recommendations:

- 1) It is necessary to develop a federal law “On the use of confidential internal information by state and municipal employees,” which would regulate the responsibility of municipal employees in using confidential information on behalf of the municipality. To develop such a law, it is expedient to study the experience of foreign countries and the experience of the Federal Commission on Securities in controlling and regulating the use of confidential information in the securities trade.
- 2) As was shown before, participation of the municipality in open joint-stock companies can result in conflicts of interest and discrimination against both the competing companies and the joint-stock company (see Case 4). Therefore, legislation should be adopted to ban municipalities from owning shares in joint-stock companies.
- 3) As a municipal unitary enterprise (MUE) uses municipal property and is created with the purpose of rendering services to the community (or to the municipality), the responsibilities of the head of a unitary enterprise are fundamentally the same as those of a municipal employee. Hence, it is necessary that all requirements and restrictions applied to a municipal employee should be applied to the head of a municipal unitary enterprise, including the obligation of annual disclosure of personal income and property and the obligation to report on the status of property entrusted to his organization.
- 4) With a view toward strengthening public control of MUE activity and the proper use of municipal property, it is necessary to develop legislative amendments calling for annual reports on MUE activity. The information in the report should include, at a minimum:
 - MUE name;
 - the address of the MUE;
 - the list of the property entrusted to it for management;
 - profit earned the previous year; distribution of revenues between the municipal budget and MUE; and allocation of profit remaining at the MUE.

Legislation must mandate an inventory of all MEU property, including guidelines for its use. As a result of the inventory, it is necessary to adopt one of the following decisions:

- closing the MUE through full privatization;

- transfer of part of MUE property to perform social services;
- preservation of current status.

The law has to provide federal guidelines for procurement of goods and services as well as sanctions for violations. Regulations covering implementation of procurement procedures can be provided by institutions of local government that are obliged to abide by the appropriate statutory acts in allocating financial resources.

5. INCENTIVES FOR GOOD PERFORMANCE AND FIGHTING CORRUPTION⁷

5.1 Corruption and Decentralization of Power in Russia

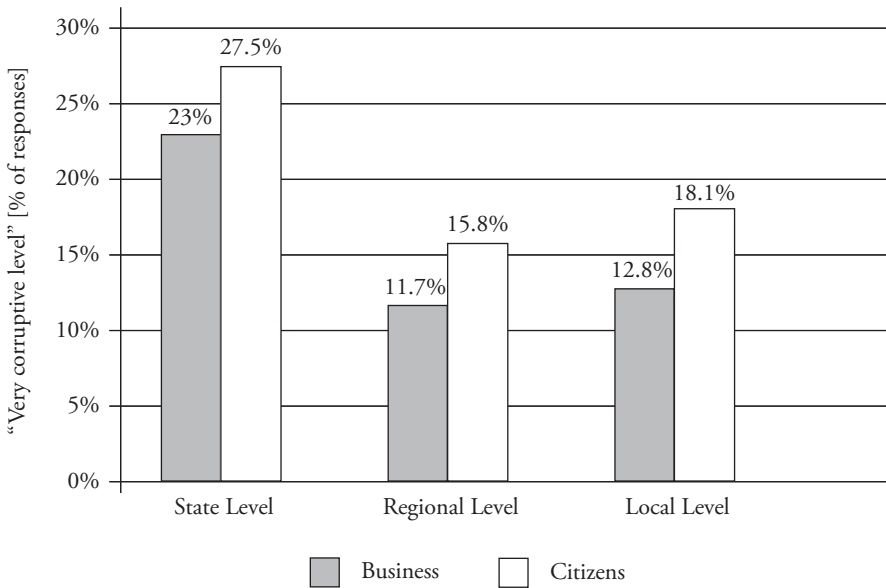
The modern, democratic federal state of Russia is a hierarchical, multilevel formation. The structure rests on four pillars. First, the top level is the federal level, which is somewhat independent from the lower levels, such as the regional and local levels. Second, inside each level, there are independent agencies with special competencies. Furthermore, inside each agency, there are hierarchical structures of departments. It is obvious that the degree of corruption within the state apparatus varies; it depends on an agency's or department's level of authority and its position within the system.

Proceeding from the top down, from the federal to the local level, local municipalities are not only in a position to resolve problems of their constituency, but they can be better monitored by the citizens, thereby reducing the potential for corruption. It is believed that activities and decisions about local problems are more transparent and less tainted by corruption for the following reasons:

First, at the local level, people can more easily link official decisions to a particular authority and judge its result. Accordingly, it is easier to identify an official whose decision conflicts with the public interest. Second, within the framework of a local municipality it is much easier to exert pressure on the authorities and hence, to reduce corruption: what is called by Albert Hirshman "protest" and "voting by legs." It is much easier for citizens to protest a decision by the local authority as opposed to decisions brought on the federal level, and since many jurisdictions offer identical services, one can always switch agencies. The question is whether this logic in the application of the Russian federal relations justifies itself.

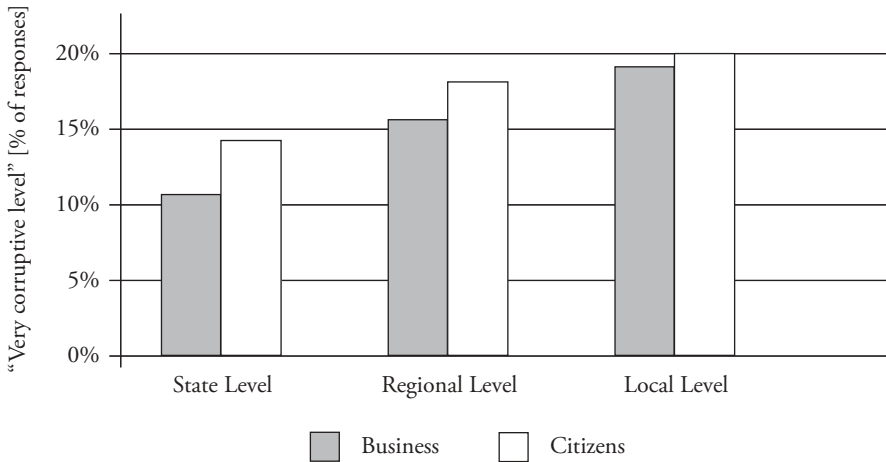
Figure 6.2 shows that citizens and businessmen consider the legislature the most corrupt at the federal level, or at least at the level directly subordinate to it. Thus citizens, in comparison with businessmen, are inclined to judge the federal level more harshly.

Figure 6.2
Public Perception of Corruption at Different Levels of Legislative Authority



As for executive authority, the answers reflect a different order: The lower the level, the more corruption. This order is established on the basis of answers by citizens and businessmen (Figure 6.3).

Figure 6.3
Public Perceptions of Corruption at Different Levels of Government
(Executive Authority)



According to the research results, bodies of government that are considered most corrupt:

- constantly included in direct contact with the population;
- allocated the greatest discretionary powers;
- were the least accountable to citizens (through election);
- occupied a monopoly position in a certain sector of management.

5.2 Stimulus for Municipal Officials

5.2.1 General Characteristics of the Compensation System

According to FZ-8 (art. 16), the financial compensation of municipal employees, as well as bonuses and other payments complementing the salary of the municipal employee, are determined independently by local self-government institutions.

However, in practice, the compensation system of municipal employees in most cases is similar to that of federal civil servants. Components of compensation include:

- official salary;
- supplement to salary in the qualifying category;
- supplement to salary for special conditions of civil service;
- supplement to official salary for long service;
- bonus.

Table 6.2 shows the average official salary of civil servants. Based on our research to estimate the level of compensation for municipal employees, it is possible to state that the compensation of municipal and civil servants is approximately identical.

Table 6.2
The Average Official Salary of Civil Servants

Level of Management	Official Salary [rbls.]
Top manager	17,000
Medium level	2,520
Lower level	1,320
Executor	1,180

Source: “Information for Democracy” Foundation, 2000.

Russian officials (including municipal officials) receive a considerable part of their income as wage supplements and indirect payments (Table 6.4). Supplements are paid

monthly. Supplements can amount to 200 percent of base salary for top positions, 150 percent for top experts, 120 percent for lower level professionals, and 60 percent for others.

Table 6.3
The Average Extra Charges for Length of Service Depending
on the Experience of Work of a Civil Servant

Length of State Service	Extra Charges [% of Official Salary]
1 to 5 years	10
5 to 10 years	15
10 to 15 years	20
More than 15 years	30

Compensation for state employees in the Russian Federation, irrespective of gender, age and position, is much below compensation in the private sector. However, the higher the position, the greater the difference between the administrative and private sectors. So, a top-level manager in state service receives a compensation that is 10–15 times less than the same position at a private company; it's 7–10 times lower for middle managers, 5–7 times for low-level managers and 1.5–3 times lower at the base level. This scale corresponds to the general practice worldwide. The degree of difference testifies to the extreme non-competitiveness of public sector employment and establishes a contra-selection of entrants into state bureaucracy. Consequently, there is great turnover of staff in Russian government agencies.

According to research, there is little incentive in monetary terms for Moscow officials to perform well in their office. Only 12.5 percent of respondents regarded their wages as incentives for good performance. It is interesting that wage incentives ranked the same as discounted use of public transportation (13.6 percent). Probably, officials perceive this privilege as essential corresponding to the level of their compensation. Approximately at the same level is the incentive of pay (11.6 percent). Bonuses carry a little more weight as incentive: 16 percent of respondents regard them as a strong incentive.

The opportunity to use departmental medicine stimulates officials far above other opportunities: 23.7 percent have answered that this is an effective incentive. Approximately the same importance is given to the size of pension to be received (23.6 percent).

Non-material incentives are no less important than monetary ones. The most essential non-material incentives include: a position with more challenges or more responsibility than a current post, 13.5 percent; opportunity for promotion, 15.7 percent; and also the opportunity to get employment in private sector after leaving state service, 16.4 percent.

Thus, warnings, censure and similar sanctions are poor incentives for improvement of work performance. Officials are much better stimulated by state awards, 10.9 percent, and expression of gratitude, 9.9 percent.

It is possible to conclude that incentives for Moscow officials today are based not only on wages. Major incentives include opportunities for career advancement, good employment in private business after termination of office, retirement benefits, awards, certificates for good job performance, and departmental medicine.

5.2.2 Satisfaction of Officials According to their Level of Compensation and Social Privileges

The majority of respondents are not satisfied with the level of their compensation, social privileges, and employment guarantees, as demonstrated in Table 6.4. The level of satisfaction in the table corresponds to the following:

- not satisfied;
- not satisfied faster;
- somewhat satisfied, and somewhat unsatisfied, average satisfaction;
- fairly satisfied;
- completely satisfied.

Table 6.4
Degree of Satisfaction with the Present Level of Wages,
Social Privileges, and Guarantees

No.	List of Privileges and Guarantees	Level of Satisfaction				
		1	2	3	4	5
1	Wages, including all extra charges.	62.4	21.3	12.6	3.1	0.6
2	Bonuses.	54.3	22.9	16.2	4.7	1.8
3	Payment of holidays.	46.1	24.8	18.9	8.4	1.8
4	Indirect expenses for public service, providing a meal at a low price, departmental medical services etc.	58.9	17.6	15.4	6.7	1.4
5	Privileges for public service, providing reception of habitation, permits on rest, discount travel on public transportation, etc.	64.4	14.8	14.3	4.9	1.5
6	Pension upon termination of public service.	40.1	21.0	24.7	10.7	3.5
7	Guarantee of career in public service.	49.9	16.8	22.5	8.7	2.1
8	Level of legal security.	44.3	17.8	25.4	10.7	1.9

The level of satisfaction with officials' wages is lowest among the parameters included in Table 6.4: only 0.6 percent are completely satisfied. Such a high level of dissatisfaction of officials with their compensation corresponds with the statement that wages are a weak stimulus for good job performance. The opportunity for career advancement or promotion in a post is significant enough for many officials, but as a rule they are not satisfied with guarantees of employment. Therefore, guarantees of a career would be an important resource to increase the importance of public service and the level of motivation to work. The same concerns the level of legal security for officials: Its increase would increase the importance of public service.

5.2.3 Wages and Corruption: How to Pay Russian Officials

Successful reform of public service demands not only the development of guidelines but a whole set of practical solutions for implementation. It is not enough to declare that wages should be raised. It is not enough to say that it is necessary to adopt official guidelines, etc. It is necessary to adopt concrete provisions on whose compensation should be increased, and to what extent. It is necessary to clarify the objectives to be achieved before reforms are implemented. One such objective is, certainly, the minimization of corruption.

The question of who should benefit from salary increases has split the scientific community. Some researchers believe that wage increases are necessary only for officials involved in decision-making; others disagree with this categorically and suggest that the salary levels should be preserved at the current level; while yet other researchers suggest a salary increase only for officials who occupy senior and lower state posts of public service. Not less tricky is the question of the "optimum" size of payment.

Results of statistical analyses on the ratio between the level of wages and corruption allow us to make only the following, limited conclusions:

- the fixed level of interrelation between wages and corruption does not guarantee reduction of corruption through wage increases;
- the level of wages affect corruption only in combination with other measures;
- however, low salaries do invite corruption.

To establish an effective relationship between salary increases and the reduction of corruption, it is necessary to adopt sanctions, such as fines, reduction of retirement benefits, etc. Moreover, in the framework of "hypotheses on fair compensation," it is necessary to adopt special measures that could alter the widespread belief that corruption under conditions of low compensation is a fair response from bureaucrats to unreasonable wages from the state.

Both theoretical and experimental works confirm the opinion stated by anticorruption experts that salary increases do not have an essential influence on the reduction of corruption, though low salaries as a rule are accompanied by significant corruption activity.

The statistical analysis leads to the following conclusions:

- A connection between low wages and the level of corruption exists. However, this does not mean that wage increases result in a decrease in corruption.
- Countries with low corruption, and, hence, with effective bureaucracy, spend relatively less.

Clearly, a prosperous economy has a well paid but not too burdensome bureaucracy. However, this is also the result of effective management of administrations. Corruption is reduced simultaneously with the adoption of effective political and legal regulation in public life.

Sociological research has shown that employees of ministries in our sample earn an average of 5,000 rubles per month. Adequate work performance for officials is demonstrated at a salary of 18,000 rubles per month, plus supplementary compensation, and a 25,000 monthly salary without supplements. This means that, for civil servants, a significant wage increase means a 300–500 percent raise.

It is impossible to compare compensation expected by Russian top officials to that of their foreign counterparts. But the above-mentioned rate of increase would strain the limited budget resources available in Russia.

An effective system of compensation of state and local employees is based on:

- Differentiation in compensation.
- Conversion to a contract system, based on job performance.
- Legislative provisions on annual pay increases for civil servants, and establishing compensation based on a ratio between the state and municipal level and the private sector and changes in economic conditions.
- Establishing fixed levels tied to performance by individual officials or on a collective basis.

Recommendations:

One possible way to increase the appeal of municipal service has been developed by the “Information for Democracy Fund.”⁸ In a summary, the plan includes the following steps:

- 1) Essential payment increases, as allowed by the budget.
- 2) Payment increases in conjunction with the reform of public service, including change in compensation guidelines (merit-based compensation).
- 3) The system of wage increases in ministries and departments should be regulated. Reform of a control system should be implemented simultaneously with the

establishment of anticorruption programs. The order of reforms in departments can be determined by establishing a connection between their work and accommodating a profitable part of the budget (for example, customs and tax bodies can be reformed first).

- 4) Reform is accompanied by an active propaganda campaign that explains to citizens that taxes will be used to increase management efficiency, that officials perform their duty for the benefit of citizens and are paid from tax revenues, that officials are adequately compensated, and that citizens can expect proper service without paying extra money as bribes.

The listed conditions are formulated in a general framework. In practice, serious thinking should go into selecting the right components of administrative reform, to increase compensation for civil servants while ensuring adequate service to citizens.

6. CONCLUSION

The various survey and poll results show that the personal factor plays a significant role in the Russian system of government, including local self-government. This might be explained by the traditional Russian mentality. Nevertheless, a high dependence of the municipal administrative systems on personal and professional qualities of their top executives makes these systems vulnerable and generates negative tendencies of authoritarianism and criminalization of municipal administrations. So, for example, if an elected mayor (the head of administration) of a city or rural district is a dishonorable, incompetent, unmotivated person, with a low level of administrative culture and sense of justice, or if he is simply a criminal, the whole idea of local self-government can be discredited among people living in a given municipality, or even in an entire region, thereby alienating the population from local authorities.

Strong representative bodies (more numerous and with a higher legal status) and public civil organizations should become mechanisms of counteraction to these tendencies. Today, local government officials do not pay much attention to initiatives coming from citizens, rating them as last on scale of priorities in the decision-making process. Civil consciousness of the majority about municipal authority, as well as public awareness as such, is very low. While in theory municipal employees offer the right to each citizen to obtain information on local government affairs and the necessity to engage citizens in policy decisions at the municipal level, in practice they show a very low level of readiness for cooperation, not undertaking real actions to establish a system that engages citizens in the affairs of the local community. Thus, the municipal authority loses its basic social function.

Besides limiting involvement in the process of local self-government, this situation becomes a source of additional negative tendencies. First, it can lead to a scenario where local bodies of the state government assume the powers of local self-government. Second, mayors accumulate undue authority, through which they can pursue their own private or business interests instead of meeting the needs of local citizens. Third, some social groups with access to the decision-making process in local self-government may pursue their own objectives that conflict with the interests of the rest of the local community.

The general view on the development of legislation on conflict of interest issues in Russian local self-government is that it is vague and not balanced. Most regulations on areas of potential conflict are covered in various legislative acts, and there are almost no specific laws providing solutions for conflicts of interest in public policy institutions—nothing like the Latvian Law On Prevention of Conflict of Interest in Local Self-Government. Various federal and regional legislative acts may contain prohibitions and restrictions concerning the prevention of conflict situations in particular local government activities. Having said that, one must admit that there are some effective conflict of interest regulations, but they mostly apply to municipal employees working under labor contract, while the activities of elected officials are still unregulated by a legislative framework, and are subject to various, often contradicting interpretations.

For instance, the issue of involvement of local government officials in business activities is subject to strict regulations that apply to municipal employees. But since the Law “On the status of elected officials in local self government” has not been passed, currently there is no discussion of any regulations concerning involvement in business activities by councilors and elected mayors.

Institutional conflict of interest as conflict of competencies is quite frequent and poorly regulated in Russia. Right now it is obvious that the way to regulate the confusion regarding competencies in Russia is not to create new regulations to replace current ones, but to amend existing regulations in order to eliminate overlap of competences.

There are no special laws or normative guidelines devoted to regulating the misuse of municipal property. The list of restrictions on municipal employees contains an article on the misuse of inventory and technical equipment in municipal property, but there is no detailed regulation on property misuse for councilors and mayors, though they are still subject to general articles of the penal code dealing with theft and robbery.

An acute problem in Russian local self-government practice is a use of official information by local self-government officials for personal gain. This issue is poorly regulated. Even in the area of public procurement, the penal code includes no sanctions on the misuse of confidential information. There is a general understanding among different policy stakeholders that regulation on the use of official information should be developed as soon as possible.

Conflicts of interest in local self-governments in Russia remain significant obstacles to social and economic reforms. In recent years, demands to modify the Russian

legislative system, to reduce the scale of conflicts of interest in local self-governments, are growing, along with the need for guidance on ethical requirements and professional background of local self-government officials (both elected and appointed). It is no wonder that one of the major directions of the ongoing legislative reform of local governance is the development of local government regulations that would help to create a more balanced and well designed conflict of interest prevention mechanism in the framework of Russian legislation.

NOTES

¹ See federal Law No. 55-FZ.

² Item 3 article #11 of federal Law No. 8-FZ “On the basis of municipal service...”

³ Art. 10.1 FZ-178.

⁴ Art. 12 FZ-178.

⁵ Art. 3 FZ-178.

⁶ Art. 8.4 FZ-161.

⁷ This chapter is based on the research of the regional “Information for Democracy Fund” (Fund INDEM, www.indem.ru, 2000).

⁸ www.indem.ru.

Waiting for a Conflict of Interest —Constitutional Law in Slovakia

Jaroslav Pilat

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Waiting for a Conflict of Interest —Constitutional Law in Slovakia

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1. INTRODUCTION

The Slovak Republic is a unitary state that was established in 1993 by dividing the Czech and Slovak Federal Republic. Since 1990, a so-called dual public administration has existed in Slovakia. Public administration is performed in a system of state administration and self-government. Local government was renewed in Slovakia in 1990, when the Slovak National Council¹ approved Law No. 369/1990 Coll. Through that law, municipal government was created at the local level, and state administration was separated from self-government.

Local state government is based on law No. 222/1996 Coll., which pertains to districts and regions. It creates a so-called integrated public administration implemented by district offices in the area of the competent districts (79) and regional offices in the area of the competent regions (eight). Besides this, local state administration is also exercised by the network of specialized agencies, e.g., tax offices, military service offices, etc. Special laws established these specialized agencies of local and state administration. The ministries are the central bodies of state administration, under whose authority the Antimonopoly Office, Statistics Office of the Slovak Republic, Civil Service Office, and others belong.

Local government² has existed since 1991 at the municipal level, based on law No. 369/1990 Coll. on the establishment of municipalities. By the year 2001, the system of local government was still incomplete, even though, since 1992, the Constitution of the Slovak Republic had anticipated in its articles that the second level of local government would be established. In the summer of 2001, Law No. 302/2001 Coll. was approved on the self-government of higher regional units (law on regional self-governments). This created the second level of elected self-government. The law defines eight self-governmental regions, following regional divisions, in which state administration is carried out. In December 2001, elections took place for the regional bodies of self-governments, and the process of creation of second-level institutions of local government in Slovakia was completed. The collective elected body at the state level is the National Council of the Slovak Republic, i.e., the Parliament. The head of the state is the president, who is elected by direct vote by the citizens.

Table 7.1
System of Public Bodies in the Slovak Republic

President	Parliament	Government
State Administration <ul style="list-style-type: none"> • Ministers, other central administration bodies • Regional offices (8) • District offices (79) • Specialized agencies of state administration at the local level 		Local Self-Government <ul style="list-style-type: none"> • Self governmental regions (8) • Municipalities/cities (2,891)

In the current system of local public administration, its representatives are also divided according to which self-government they represent. Accordingly, if they are representatives of local governments, they are elected or, in the case of representatives of state administration, they are appointed.

The municipal/town council and the mayor function at the level of self-government. The citizens, under the respective self-governments, elect their own councilors, as well as mayors, by direct vote. At the level of regional self-governments the same applies; citizens living in the area of the self-government elect representatives (councilors) and the heads of regional self-governments by direct vote.

In addition, there is a chief auditor at the self-government level. It is a significant position from the point of view of conflicts of interest. The municipal council establishes the position of the chief auditor. The chief auditor is elected by the municipal council for a period of six years, and when the term is up, his employment relationship with the municipality ends. The chief auditor is a municipal employee and is accountable to the municipal council. The law determines some appointments that are incompatible with the post of municipal chief auditor, to prevent possible conflicts of interest.

The chief auditor is the employee of the regional self-government who supervises the fulfillment of the regional self-government's tasks. He supervises the revenues and expenditures of the self-government, along with property management and disposal.

We can consider the elected representatives of local self-governments and chief auditors as key players in possible conflicts of interest.

Legislation is different for employees of local public administrations and state administration officials. Employment in state administration is regulated by Law No. 312/2001 Coll. on civil service. The subject of this law is to establish legal relations in civil service. Stipulations of this law on compensation, vacation days, and health insurance apply to senior political positions and to professionals assisting members of government, unless special laws specify otherwise. The law has also established the Civil Service Office, which executes tasks in the area of civil service and publishes the Ethics Code, the rules of which civil servants are obliged to follow.

Law No. 313/2001 Coll. on public service regulates legal relations of self-government employees. This law regulates public service and employment relations in public office for employers that are legal entities, such as municipalities and regional self-governments. This law covers public service activities and activities by employees in local self-governments.

1.1 Recent History of Preventing Conflict of Interest in the Slovak Republic

The problem of conflict of interest in Slovakia was recognized for the first time in 1992. At that time, the Slovak National Council adopted Law No. 314/1992 Coll. on some measures related to the protection of public interest. The law did not regulate adequately the problem of possible conflicts of interest nor did it provide a solution. In addition, the law applied to conflicts of interest only at the state level, but not at the level of local government.

The Slovak Parliament tried to address the problem of conflict of interest for the second time in 1995, when constitutional Law No. 119/1995 Coll., on the prohibition of conflict of interest in positions for constitutional officials and higher state officials, was adopted. It is significant that this law was adopted in the form of a constitutional law that requires a 3/5 majority (90 votes), in compliance with the Constitution of the Slovak Republic. The MPs of Vladimir Meciar's party (HZDS—movement for democratic Slovakia) in cooperation with MPs of post-communist Democratic Left Party (SDL) drafted this constitutional law. It seems that no one wanted to deal exhaustively with the problem of conflict of interest.

The law applies only to 230 positions—a very low figure. The law does not contain any sanctions, so a conflict of interest is not sanctioned in any way. Also, the law does not cover conflict of interest at the local level. The fact that no legal proceeding related to conflict of interest, or even the appearance of it, has been filed against any constitutional official or higher state official tells a lot about the effectiveness of the law.

In the last legislative attempt, a draft proposal for a new constitutional law on conflict of interest was submitted to Parliament in May 2002. Two other drafts for legislation, outlining amendments to this constitutional law have been submitted to Parliament. The proposals have been developed by two MPs, constitutional lawyers, in cooperation with a number of non-governmental experts. The proposals were more stringent and covered a wider circle of people (such as family members of officials), and, for the first time, they were applicable at the local level as well. Also for the first time, restrictions of post-employment activities were incorporated into the law. The law was to be in force before the elections in September 2002. MPs rejected the draft in the first round, perhaps due to its relative strictness, and consequently, Parliament has not dealt with the issue since.

The problem of conflict of interest in Slovakia is regulated by this law even more comprehensively than was proposed before. The government elected in 2002 included in its Program Declaration of the Government of the Slovak Republic the adoption of new legal regulations on conflict of interest. The minister of justice has created a working commission of representatives of constitutional officials, state administration, self-government and NGOs. Drafts for a new constitutional law were to be submitted to Parliament in 2003.

At present, legal provisions regulate conflict of interest at the level of local public administration through the institution of incompatibility of positions/appointments. These provisions include the following laws:

- No. 369/1990 Coll.—municipal law (applies to mayors, deputies of municipal council, and chief supervisors);
- No. 302/2001 Coll. on regional self-governments (applies to heads of regional self-governments, members of councils of regional self-governments, and chief auditors of self-governmental regions);
- No. 312/2001 Coll. on civil service (applies to district office principals, regional office principals, their deputies, and other employees of local state administration);
- No. 313/2001 Coll. on public service (applies to employees of municipal and regional self-governments).

Other laws that deal with the regulation of possible conflict of interest, and that could prevent or monitor conflicts of interest and thereby contribute to a more open and transparent public administration, include:

- No. 39/1993 Coll. on the Supreme Audit Office;
- No. 263/1999 Coll. on public procurement;
- No. 411/2002 Coll. on the ombudsman;
- No. 291/2002 Coll. on the state treasury;
- No. 211/2000 on a freedom of information act.

1.2 General Regulation of Conflict of Interest that Concerns Civil Servants and Local Government Employees

Legal regulation adopted in 2001 has essentially specified the conditions of state and public service. More detailed legal regulations leave less space for non-transparent and illegal conduct that can result in conflict of interest. Article 53 of the law on civil service defines the general duties of civil servants. They include:

- 1) respect for the Constitution of Slovak Republic, constitutional laws, laws and other generally binding legal regulations that cover civil service, code of ethics and other regulations in civil service;

- 2) impartial and politically neutral execution of civil service;
- 3) increasing requirements for qualification;
- 4) abstention from conduct and action leading to a conflict between public and private interests, primarily abstention from use of information acquired in public service for one's own personal benefit or for another individual's personal benefit; this obligation remains in effect even after termination of office;
- 5) ensuring that a civil servant's political activity does not endanger public confidence in his/her ability to perform a public service impartially and effectively;
- 6) drawing official attention to any real or possible conflicts of interest;
- 7) abstention from any activities or conduct that could threaten a public official's integrity or that could threaten the public's confidence in a civil servant's impartiality in the decision-making process.

1.2.1 Civil Service Office—Code of Ethics

Besides the duties assigned by law to civil servants, they are bound by the ethics code,³ issued by the Civil Service Office of the Slovak Republic based on the civil service law. The ethics code specifies some of the regulations of the law. The general duties of civil servants, according to the ethics code are the following:

- Civil servants are obliged to abstain from duties that could interfere with the integrity of the civil service.
- Civil servants must act professionally in performing their duties. Their decisions must be based on factual justification and must ensure equal treatment. They must maintain the public's confidence in their integrity. They must carry out their duties at the highest professional level possible, and commit themselves to continuous professional study.
- In their interactions with the public, as well as with their co-workers or employees of other public service offices, civil servants have to display honesty, fairness, and proper conduct.
- Civil servants must always act in the public interest and are obliged to abstain from actions that could lead to conflicts of interest between them and other civil servants, family relations, or other physical or legal entities. They are obliged to announce any real or possible conflict of interest to their supervisor.
- Civil servants must not participate in any activity that could be in conflict with the proper execution of their official duties.
- Civil servants must act in a politically neutral way and ensure competent performance of public service.
- Civil servants must avoid activities that could shake public confidence in their abilities to execute their official duties impartially.

1.2.2 Public Service Law

Unlike the civil service law, public service law sets the general guidelines for local government employees. This law does not empower any institution to publish a document similar to the ethics code of the local self-government. Some of the general duties of public service employees include (article 9):

- act and make decisions impartially and avoid any actions in performing public service that could damage public confidence in one's impartiality and objectivity in decision-making;
- avoid actions that could lead to a conflict between public and personal interests, namely the misuse of information acquired in office for personal benefit or for the benefit of an individual related to the official.

Besides this, the law defines (in article 10) other duties related only to senior local government employees. It mostly covers concrete issues of an economic nature that we discuss below.

1.3 Some Statistical Data about Corruption in Slovakia

According to official criminal statistics, corruption is almost non-existent in Slovakia:

Table 7.2

Number of People Prosecuted for, or Suspected of, Corruption in Slovakia⁴

Criminal offence	1997		1998		1999		2000		2001	
	P	I	P	I	P	I	P	I*	P	I*
§ 160 Accepting bribes	23	13	35	16	28	13	44	63	18	27
§ 161 Giving/offering bribes	0	0	4	4	21	7	62	52	29	37
§ 162 Indirect corruption	0	0	1	0	1	1	2	1	5	3

P = number of people prosecuted

I = number of people indicted

I* = number of people indicted plus number of people convicted

This seems contradicted by numbers showing the percentage of respondents (i.e., the general public) who admitted having offered bribes in the past years.⁵ According to the Institute for Public Opinion Research, Slovak Statistical Office in 1997, 31.98 percent of respondents admitted offering money or gifts; in 1998—33.03 percent, 1999—29.07 percent, in 2000—27.46 percent, in 2001—25.73 percent.

As we can see, the numbers are in decline, however slowly, as we see some progress. No doubt, this can also be attributed to new legal institutions established after 1998. Many of them are also connected to conflict of interest.

2. POTENTIAL SOURCES OF CONFLICT OF INTEREST IN THE LOCAL GOVERNMENT

2.1 Duplication of Power, Conflict of Roles, Incompatibility of Positions

The Constitution of the Slovak Republic defines incompatibility of positions for the president of the republic, MPs, members of the government, judges, and prosecutors; The issue is also addressed in the law on monitoring government activities in the central state administration, the laws on ombudsmen, the police corps, the Slovak Intelligence Service, etc. But all these legal regulations concern the incompatibility of positions only at the central level (e.g., president, MPs, the government), as well as conflicts between independent agencies established by special laws (judges, prosecutors, etc.).

The Slovak Republic is now in the process of decentralizing public administration, but the country still has a predominance of central administrative agencies over self-governmental bodies. This is manifest in the number of bodies and the range of competencies, but also in the number of employees. That is the reason we discuss local state administration first.

Rules on the incompatibility of positions are contained in acts that regulate conditions for local self-government. Based on article 11, paragraph 2 of the municipal law, the position of a councilor of the municipal council is incompatible with the position of mayor, employment by the municipality where he/she was elected, or membership in the statutory body of a budgetary organization or a subordinate agency created by the same municipality.

Based on article 13, paragraph 3 of the municipal law, the position of municipal/city mayor is incompatible with the position of representative in the municipal council, employment by the same municipality, the statutory body of a budgetary organization or of a subordinate organization created by the same municipality, head of a self-governmental region, or executive of a state administration body.

The law states incompatibility between the position of a municipal mayor and the position of a senior employee of state administration body. This is not an absolute incompatibility, it is only based on the provisions of this law. Civil service law has extended this incompatibility.

In this case (and also in case of councilors) the legal principle *lex priori derogat lex posteriori* applies, so a later law modified a previously adopted one. As of now, the civil service law has been in effect since 2001, and the municipal law since 1990, both stating that the position of mayor is incompatible with any positions in civil service.

Based on article 13, paragraph 1, the position of a regional council representative is incompatible with the position of head of a self-government region, member of a legal entity created or established by the regional self-government, employee of regional self-government a judge, prosecutor, etc. This law does not regulate the incompatibility of positions of a representative of a regional self-governmental council with a position in the civil service; it only states that the issue is regulated by the rulings of the civil service law.

Based on the same law on regional self-governments, and other laws, the position of the head of the regional self-government is incompatible with the position of a representative of a municipal council, a member of a legal entity created and established by the regional self-government, statutory representative of a legal entity with property interest of the regional self-government, an employee of regional self-government, municipal mayor or city mayor. Since incompatibility with positions in civil service is not regulated, the rulings of the civil service law apply here.

In this issue, the general rule explained above applies. Slovakia is still in the process of decentralization of public administration, consequently, the dominance of civil service is prevalent. This is one of the reasons why, years ago, lawmakers did not consider it necessary to regulate the issue of incompatibility between positions in self-government and in the central government. The intervention of the government in a centralized state is considered normal and necessary. As the process of decentralization moves forward, these legal relations become regulated specifically and in detail.

2.2 Economic Conflict of Interest

2.2.1 The Acceptance of Gifts

“Gifts” can be (and often are) the motivation behind non-transparent actions. They are given to receive special treatment, advantages, or permits, or to hide or give incomplete information, etc. These issues were not regulated until April 2001, when civil service and public service laws brought detailed regulation of this set of problems.

Public service law regulates the problem of acceptance/non-acceptance of gifts by employees in local self-government. In our case, the ruling applies not only to “ordinary” employees of local self-government, but also to the municipal chief auditor and chief

auditors in regional self-governments. The law applies to officials in municipalities and regional self-government.

Article 9 contains the following ruling:

“the employee is obliged to refuse any gifts and other advantages except for gifts and advantages offered by the employer.”

No document similar to a code of ethics has been issued for public service administration and no authority exists to issue one. However, based on art. 11, the employer can adopt working procedures in which it can further specify rulings of the relevant law (within the framework of the legal system). Based on the law, these working procedures have to be implemented with the approval of the labor force, otherwise it is not valid.

As far as mayors, respective heads of regional self-governments, and councilors of local self-government councils are concerned, neither the municipal law, nor the law on regional self-government, contain any rulings on the acceptance or refusal of gifts by persons in these positions. The laws only contain a vow for people to take when assuming office. Officials have to pledge that they will carry out their duties in the interest of the municipality or regional self-government. They pledge to follow the Constitution of the Slovak Republic, its laws, etc., but since these laws do not expressly forbid the acceptance of gifts, officials are constrained only by the interest of the municipality or regional self-government.

2.2.2 The Possibility to Run a Business

Another area where conflict of interest can and does appear is the possibility of running a business while being an employee of an administration, or an elected member in local self-government.

The rights and responsibilities of local self-government employees are regulated by public service law. This law outlines the duties of a public service employee only in general terms, in the rulings of article 9. Among others they include:

- keeping confidential information acquired in public service; confidential information cannot be shared with persons related to a supervisor, even after office term has ended, unless special rulings allow it;
- use of information acquired in public service for one's own personal benefit, or for the benefit of anybody connected to the official.

From the content of these rulings we could draw these conclusions: employees in senior positions in public service should not run a business or be involved in someone else's business enterprise. Such behavior can lead to conflict of interest, e.g., to the use

of confidential information. The law allows administrative organizations to adopt their own procedures that regulate involvement in private enterprises. In article 10, the law contains special rulings for senior employees:

“Senior employees in the position of statutory deputy of employer listed in article 1 paragraph 1, and other senior employees assigned by working procedure, cannot run a business or perform any income generating and simultaneously be a member of the executive, control and supervising bodies of legal entities involved in business activities. Prohibition of membership in executive, controlling and supervising bodies of legal entities managing an enterprise does not apply to senior employees in the position of statutory representative of public high school (or university). The restriction to perform any other earning activity does not apply to providing health care in state and regional health institutions established by the municipality; to scientific activities, teaching, holding lectures, public speaking, PR activities, literary and artistic activities, activities of intermediary and arbitrator and collective negotiations, the administration of own estate or the estate of one’s own underage children.”

Working as a professional interpreter is allowed for civil servants only when it is performed for the court or another state body or municipality. This is similar to the regulation applying to civil service employees. Rulings concerning executive positions at municipalities and regional self-governments also apply to chief auditors.

The government of the Slovak Republic appoints principals to regional state administration bodies and district state administration offices based on the law on local state administration management (No. 222/1996 Coll.). Based on article 5, paragraph 4 of the civil service law, officials can also be appointed to these positions by the national government. Other rulings of the civil service law apply to principals of regional or district offices. And finally, article 5, paragraph 5 of the civil service law regulates compensation, vacation, and health insurance for political appointees. It is clear that any prohibitions and restrictions listed in the civil service law do not apply to the highest office holders of local state administration at the regional or district level!

For example, the principal of a district office, who is the primary representative of the central government in a small region, has been appointed by the government based on political considerations. He has access to reliable, important and timely information, yet he can run a business without any restrictions, and he can be a member of the board of several enterprises. This is fertile ground for conflict of interest.

2.2.3 Running a Business as an Elected Official

The municipal law and the law on regional self-governments regulate business activities by councilors of municipal and regional self-government councils, mayors, and heads of regional self-governments.

Municipal law regulates incompatibility issues for councilors and mayors. Anyone who meets the requirements described in the law can be a candidate for the position of mayor and council representative. The prohibition on owning or managing a business is not among those requirements. In addition, the law does not even prohibit owning or managing a business for those who have been elected and have taken office.

The position of municipal council representative is incompatible with the position of:

- mayor;
- employee of municipality in which he was elected;
- employee of statutory body of budgetary or tax authority established by the municipality in which he was elected;
- employee of an organization based on the special law.

It is noticeable that the law only forbids councilors to participate in bodies of municipal budgetary or tax authorities. Running a business or the membership or employment in legal entities engaged in business management (excluding the municipal budgetary or tax authorities) are allowed by the law. In Slovakia, this situation could impede self-governmental activity. Slovakia has 2,883 municipalities, and only 138 of them have city status. If businessmen were prohibited by law to participate in self-government administrations in small municipalities, i.e., villages (the majority of settlements in Slovakia), self-governments may be paralyzed in many places. Representatives can receive their mandate only after pledging to perform their duties in the interest of the municipality. This could cover the problem of public service and running a business simultaneously, even though it is clear, that regulations in this respect are too vague.

Restrictions on post-employment activities are not covered explicitly by Slovakia's legal system. There was an effort to get this issue incorporated into the draft law on conflict of interest in May 2002, but the draft was not passed by the Parliament.

2.2.4 Other Provisions Preventing Economic Conflict of Interest

Public service law sets some restrictions for local self-government employees, which one can interpret as post-employment restrictions. These restrictions are outlined in article 9, paragraph 2 letter b):

“The employee is obliged to keep confidential information acquired in his official duties. He has to keep the information confidential even

after employment has ended. This rule does not apply if the employee was relieved of his duty by statutory body or delegated executive unless special instruction states otherwise.”

This is the only regulation that sets some restrictions on officials whose employment has ended.

This ruling applies to the chief auditor of the municipality, the chief auditor of regional self-government and also to other employees of the local self-government (e.g., directors of offices, etc.) based on the law covering their employment. But none of these restrictions apply to executives of district and regional state administrations.

2.3 Conflict of Interest of Personal Relations

The principle guiding elected officials (councilors of self-government councils, mayors and heads of regional self-governments) is clear. If the candidate for an office fulfills the conditions required by law, he/she can run in the election. Once elected, the official assumes the mandate by first making an official pledge regulated by several laws on local self-government.

The mandate of an official finishes when a newly elected official of local self-government takes the pledge.

The regulations of public service law cover working relations of other employees of local self-government. Furthermore, the regulations of the Labor Code apply to working relations of employees of local self-governments unless civil service law regulations have different stipulations.

Based on this law, the employee could be a physical entity who:

- has the competence to perform legal activities in his field;
- has no criminal record; this is not required if the employee is to perform manual work or his responsibilities will be dominated by physical work;
- meets the qualifications required for the position, unless it is stated differently (see below);
- is of sound health to perform the work required;
- was elected or appointed, if special instruction sets the election or appointment as a pre-condition of public service;
- makes a required pledge of conduct, unless specific rules pertaining to the position state otherwise (see below);
- has a canonical mission set by the bishop of the respective diocese to perform pedagogic activities.

Having no criminal record means that the person has not been convicted for any willful act, proof of which is a police statement.

Levels of education qualification for the purpose of this law are:

- basic (elementary) education;
- secondary education or secondary expert education (“secondary education”);
- complete secondary education or complete secondary expert education (“secondary education”);
- higher, professional education;
- university education with a bachelor degree (“university education of first level”),
- university education with a master’s degree or a PhD or doctoral diploma.

In the catalogue, the qualifying pre-conditions are listed for several working activities, which are elaborated in accordance with the pertinent income bracket.

The positions of executive employees are filled based on the results of a selection process, unless special instructions state differently. The required qualifications and professional experience of a candidate for the position of executive employee is verified by this selection process. The selection process disregards the candidate’s sex, race, skin color, faith, religion, political affiliation, or views, their national or social background, or citizenship.

The selection process is announced by the employer in print and other generally accessible mass media at least three weeks in advance.

A selection committee is established by the employer. The committee has five members, one of them is appointed by the employees. If an appointed member of the selection committee is biased, he must make an announcement of this fact to other members of the commission.

The selection committee invites suitable candidates to participate at least seven days before it starts the proceedings. The selection committee evaluates the results and rates the candidates. Awarding of positions is based on this committee’s rating. The selection committee publishes the results of the selection process, as well as the pre-conditions, criteria and other requirements fulfilled by the candidates. The selection committee will notify the candidates in written form of the result no later than 10 days after completing the selection process. If the selection committee has not chosen any of the candidates for the announced executive position, the employer will announce a new selection proceeding.

Based on this law, it is possible to appoint a substitute executive for up to six months. The executive is obliged to make an official commitment in writing at the time of signing the contract of employment.

The law determines restrictions related to so-called close ties. Close ties are defined in article 116 of the Civil Code:

“Close tie is a relative in the first degree, brother or sister, a spouse; other persons in family or of similar status are considered as close

relations if damage caused to one of them will be perceived by the other as his/her own damage.”

According to the special instructions, employees that are closely related cannot work in a hierarchy when one depends financially or in any accounting sense on the other, except for employees of embassies of the Slovak Republic abroad. These regulations are designed to prevent the potential for non-transparent management of funds.

2.4 Using Official Information for Personal Benefit

In laws regulating the establishment and position of elected bodies, there is no mention of the use of official information. The laws concerning mayors, heads of regional self-governments, and councilors of the self-government council do not cover confidentiality or guidelines for the management of classified information. The basic principle mentioned in the law is an obligation to perform one’s duties to the benefit of the municipality, city, or regional self-government.

In addition, special law No. 241/2002 Coll. defines the management of certain kinds of information. This law names the National Security Office as the highest authority for classified information management. The law distinguishes four categories of special information: top secret, secret, confidential, and prohibited. The law also regulates who has access to special information. This applies to mayors, heads of regional self-governments, and representatives of local self-government councils. Anyone in the possession of classified information has to submit the list to the National Security Office. The Office evaluates this list and classifies it appropriately. Depending on the classification, the office sets the relevant procedure for management of the information. The relevant guidelines also assign a person who is allowed to handle that particular kind of classified information: on the state level the assigned executive, in a municipality the mayor, in other legal entities its statutory body.

The law determines sanctions for the misuse of classified information. Persons violating the law can be fined up to 50,000 SKK (approx. USD1,333), other related activity can be stopped; minor mishandling of classified information can be fined up to 15,000 SKK (approx. USD400) for smaller misdemeanors; more serious misconduct, such as photographing classified documents, can be fined up to 50,000 SKK (approx. USD1,333). There is also a related criminal offence, defined by the Criminal Code, that covers breaching state, military or other types of confidentiality.

There is also a sanction defined by the Criminal Code in article 128 concerning the use of official classified information for commercial reasons:

“A person commits a criminal offence if he intentionally uses information not available to the general public for one’s own benefit or someone

else's related to him, and he obtained [this information] through his employment, profession, position, or function. If he publishes or uses this information to influence a decision in a commercial transaction, or to obtain a contract or influence the trading of shares of goods and services, he commits a crime."

Public service law applies primarily to persons who are in a working relationship with the local self-governmental authority. The law regulating the duties of employees in public office contains general principles that could also be applied to the issue of confidentiality. Of course, in their official duties, public servants have access to people's private data, which they need to perform their work (law No. 428/2002 Coll. on personal data security). Due to this circumstance, this law binds them to keep information confidential. Article 9, paragraph 2, letter b) defines the obligation to keep confidential information acquired in the performance of official duties. The law also covers confidentiality after the termination of employment.

The reasons for the obligation of confidentiality in local public service are mostly the same as in state service. The rules described in connection with confidential information are applicable in the area of state administration as well.

On the other hand, the Slovak legal system contains Law No. 211/2002 Coll. on free access to information (FOIA—Freedom Of Information Act).⁶ That law allows all physical persons and legal entities to access information managed by authorized officials.

The authorized entities include all state agencies, administrations of regional self-governments, municipalities, legal entities established by law, or state agencies and bodies of regional and municipal self-government and physical entities. In essence it is possible to ask information from anybody who is in any way connected to public funds. Of course, the basic principle of this law is "what is not classified is public."

On one hand, the law provides for authorized persons to make all information at their disposal accessible, but on the other hand, classified information, personal data, banking, tax data, and commercial secrets have to be protected, so keeping information classified in the interest of society (but based on law) surpasses the public's "right to know." From this point of view, the obligation of confidentiality mandated by the civil service and public service law is not absolute, because several state and self-governmental bodies, and their authorized employees, are obliged to provide the information based on the FOIA.

2.5 Using Local Government Property

The municipal law and the law on regional self-governments only contain a general framework on property belonging to local self-governments. Detailed regulations con-

cerning, among other things, the use of automobiles and technical equipment owned by municipalities and regional self-governments, are contained in several statutes or ordinances with a lower status than laws approved by self-government councils.

Besides laws already mentioned, there are special laws that regulate municipal property (law No. 138/1991 Coll. on municipal property) and regional self-government property (law No. 446/2001 Coll. on regional property of self-governments).

The municipal law states the following on property issues:

“Municipal properties are things in ownership of a municipality and property rights belong to the municipality. The property of a municipality serves to fulfill municipal activities. The municipal property has to increase and revalue and in general stay unreduced in its total value. It is not allowed to give municipal real estate as a gift, unless special instructions state otherwise. Municipal property can be used for public purposes only, to serve the municipal self-government. The municipal property (mostly local communications and public places) must be publicly accessible and available to be used in common ways, if the municipality has not restricted its use.”

From this it is clear that the law does not contain details, for example, on how to run a business with municipal property, conditions for the use of municipal property for municipal self-government purposes, etc. These issues are handled by individual municipalities, which are legal entities with full ownership rights, at their own discretion.

The law on municipal property determines conditions on municipal property and the transfer of state property to municipal ownership—an issue that was important during the time this law was adopted, when municipal ownership was renewed and property of relatively great value was shifted from state ownership to municipal ownership. The law also sets basic guidelines for the management of municipal property, and the standards approved by municipal councils have to be in accordance with these guidelines.

Municipal bodies and organizations are obliged to manage municipal property and state property entrusted to them for the benefit of municipal development and in the interest of citizens. Their primary obligations include:

- maintenance and use of property;
- protection of property from harm, damage, loss, and abuse;
- the use of all legal measures to protect the property, including representing its rights and legal interests;
- accounting for the property based on special instructions.

The basic property management principles are outlined in article 9. The municipal property management principles include:

- rights and duties of organizations established or created by the municipality in the management of municipal property;
- conditions for confiscation of property of organizations established or created by the municipality;
- the guidelines for use of property;
- management of stocks;
- identifying activities of organizations to be approved by municipal bodies.

The following activities are always subject to approval of the municipal council:

- contractual transfer of real estate ownership;
- contractual transfer of moveable property valued over the limit defined by the municipal council;
- property rights management of a determined value;
- auction of issues based on special instructions;
- real estate ownership in new or existing commercial companies;
- ownership of any other property not covered by a previous clause, of value determined by the municipal council.

The municipality can abandon the enforcement of municipal property rights only in cases outlined in the guidelines for municipal property management. It is clear that the elected representatives of municipalities are obliged to follow the regulations of this law and regulations of their own municipal guidelines approved in this area.

The public service law, which determines the rights and responsibilities of local self-government employees, contains regulations for the liability of employees. The liable employee is obliged to compensate the employer for the damage financially, unless he restores the property to its previous status. The employee who is responsible for missing funds entrusted to him is liable to pay full compensation for the loss or shortfall.

The employer is obliged to require of the employee to make compensation for the harm he is responsible for. This obligation follows directly from the law, and the employee cannot be pardoned by the employer without giving due compensation for damage caused. The duties listed in this section apply to municipal self-government employees, as well as to employees of regional self-governments.

A law on regional self-governments, involvement in property ownership and management is very brief:

“Regional self-government property serves to fulfill the mission of the regional self-governments. The special law regulates regional self-government property and its management.”

Act No. 446/2001 Coll. on regional self-government property is essentially a law similar to the one on municipal property. But since regional self-governments were

established 11 years after municipalities, state property transferred to regional self-governments was significantly smaller. In essence, it is property that is connected to the transfer of functions from state authority to the authority of regional self-governments, in the process of decentralization. Of course, what interested us in this field was the basic principles of property management by regional self-governments.

The property of regional self-governments consists of real estate and moveable property, including financial funds, as well as claims and other property rights and obligations in the ownership of higher regional units. Regional self-governments and their executives are obliged to manage the estate of regional self-governments in the best interest of the administration and its citizens, as well as to protect the environment.

Regional self-governments and their executives are in charge of:

- maintenance and use of property;
- protecting the property from harm, damage, loss, and misuse;
- using all legal measures to protect the property, including representing its interests before the relevant authorities;
- accounting for the property based on special instructions.

The regional self-government and its leader are obliged to manage the property based on this law and in accordance with management guidelines approved by its council. The guidelines primarily regulate:

- rights and duties of administrators;
- the conditions for confiscation of self-government property;
- the guidelines and conditions of the use of property by a third party;
- areas of activities of the administrator to be approved by the council;
- setting the property value with the approval of the council.

The following activities are always subject to approval by the council:

- contractual transfer of real estate owned by the regional self-government;
- contractual transfer of movable property of a certain value determined by relevant guidelines;
- sharing real estate owned by self-governments in new or existing commercial enterprises;
- property of regional self-governments, in new or existing commercial enterprises, of a certain value determined by relevant guidelines;
- management of property rights of a certain value determined by relevant guidelines by regional self-governments.

We can consider the basic rules for using local government property as satisfactory. Furthermore, there are a number of sub-legal regulations that set detailed rules for,

among others, use of property such as cars. The municipal/regional self-government council can authorize the use of a car, in some cases a chauffeured car, for the mayor/head of regional self-governments. This depends on individual needs and, of course, on the responsible conduct of the councilors. Since information on these measures is open to the public, we can say that, with some exceptions, these regulations have become more detailed and more resistant to misconduct.⁷

2.6 Government Employee Involvement in Political Party Activities

There are several important constitutional rulings in this field. Engaging in any political party's activities is among the basic human and citizen rights and liberties, so we must start with the constitutional ruling on this area. According to article 54 of the Constitution of the Slovak Republic:⁸

The law can restrict the right of judges and prosecutors to run a business and any other economic activity, as well as the right listed in article 29, paragraph 2 (right to found political parties and to be a member in them), and the right listed in article 37, paragraph 4 on civil servants and local self-government employees in appointed positions (...) (article 37, paragraph 4 guarantees the right to strike).

Article 54 makes it clear that the Constitution of the Slovak Republic provides the possibility to restrict by law the right guaranteed primarily in article 29, such as the right to establish and join political parties. This does not pertain to elected self-government officials, since their election is the result of their political activities and affiliation. Of course, this is not a required condition for occupying a position. The Constitution of the Slovak Republic covers employees of the state administration and local self-governments, while elected self-governmental officials (except for chief auditors of municipality/regional self-governments) are not paid employees of the municipality/regional self-government. The law on public service regulates the rights and duties of employees in this area.

We have already quoted provisions of article 9 that regulate the duties of public service employees. As for political involvement of public service employees, this article does not provide more specific regulation. Paragraph 2 letter a) says the following:

“...The employee is obliged to act and decide impartially and avoid in public service everything that could threaten the confidence in the impartiality and objectivity of his actions and decisions.”

This provision also states that the political affiliation of an employee or other persons he comes in touch with during his activities cannot be an obstacle of impartial and correct fulfillment of his duties.

This is very similar to the position of principals of district and regional offices. Since they are appointed by government based on the results of parliamentary elections, their political activity for a concrete political subject is indirectly expected. In practice, the number of places occupied in this way is based on the election results and government coalition composition. The occupation of specific regional/district offices is then a question of political agreements and negotiations in the national government coalition. The people in these positions are civil servants in accordance with the civil service law. But this law obliges them only in matters of remuneration (salaries), holidays, and health insurance.⁹

3. INSTITUTIONS AND PROCEDURES TO PREVENT AND DETECT CONFLICT OF INTEREST

3.1 Declaration of Private Property

The problem of declaration of private property by “publicly active” persons is handled insufficiently in Slovakia’s legal environment. Constitutional act No. 119/1995 Coll. on conflict of interest sets this duty for state administration officials and constitutional officials. The hidden flaw of this law is that there are no sanctions for persons who do not fulfill their duty to file the declaration on private property to the Commission of National Council of the Slovak Republic.

There is no obligation to file a declaration on private property mandated by any law for councillors of self-government councils, mayors, or the heads of regional self-governments. Only the draft of the new constitutional act on conflict of interest contains this obligation, but it was not approved in May 2002. Should anybody in an elected position decide to publicly file a property declaration, it would be due to his/her good will.

Not every employee in public service is obliged to submit a property declaration. Public service covers a wider range of professions, and often it would be unreasonable to ask employees to file a property declaration. Therefore, the public service law prescribes this obligation only for executive employees in article 10, paragraph 2. The executive employee is obliged to file a declaration on his/her property within 30 days after taking office, and then by March 31 of every calendar year while in office. The executive employees occupying positions of statutory deputy declare their property relationships in accordance with the applicable law (which is in this case the civil service law) to

the appointing agency. If this body finds that the statutory deputy filed incomplete or untruthful data, the agency must relieve the deputy of their office.

Other executive employees submit their property declarations, in accordance with the applicable law (once again the civil service law), to the statutory deputy. Submitting incomplete or untruthful data may be reason for termination of office, based on the applicable law (in this case the law No. 311/2001 Coll. Labor Code).

According to related provisions of the Civil Service Law applying to executive employees of local self-governments, the obligation to declare private property states:

“...all property declarations of civil servants must contain data on real estate, movable property, and property rights and other property values. The real estate is not subject to evaluation. The civil servant evaluates his/her movable estate, property rights and other property values according to the commonly accepted price. This property will be listed in the property declaration only when its total value is over 500,000 SKK (approximately USD12,085). Community property is, according to this law, divided in the same parts, unless special instruction determine otherwise. Part of civil servant property declaration is also a declaration by the civil servant that he/she does not have any knowledge of income of persons living with him/her in common household that could be considered as pre-tax income or income stemming from illegal resources. Purposeful declaration of incomplete or false data is considered a serious offense, which could entail the termination of employment.

If there are reasonable doubts as to the truthfulness of declared data, the civil servant is obliged to submit the data on legal reasons, date and cost of acquisition of real estate; the expenditures on the property acquisition; and data on movable property, property rights and other property values whose total value is less than 500,000 SKK (approximately USD12,085)...”

As mentioned before, provisions on the procedure for property declaration are provided by the civil service law and the public service law.

It must be noted here that the constitutional act regulating conflict of interest at the level of higher state officials is extremely weak and difficult to enforce. On the one hand, the law determines the obligation to submit a property declaration within a certain period of time or by a certain date, on the other hand, it does not contain any sanctions for non-filing.

In Slovakia we have a very recent case of non-declaration by Vladimir Meciar, a member of parliament and former three-time Prime Minister. This MP did not submit his property declaration, despite the fact that he publicly vowed to respect the Constitution and the laws of the Slovak Republic. He did not fulfill this duty in spite of several appeals. The chairman of the parliamentary committee to whom property declarations are submitted extended the deadline for Meciar. Meciar has finally submitted it, but he was the last constitutional official who did so. It was impossible to compel him through any legal sanction to fulfill his obligation. And in his case the suspicion has arisen that he has undeclared income related to his expensively renovated house that he did not declare. The law does not say anything about verification of submitted data. It is necessary to add that the law is the product of Meciar's MPs, along with MPs of post-communist Democratic Left Party (SDE). In 1995, during the worst period of Meciar's governance, "they demonstrated the possibility of cooperation between coalition and opposition" through cooperation on this law.

Author's note: March 31, 2003 was the last day for the constitutional and high-ranking officials to submit their property declaration again (annual submission). The only official who did not do it was Meciar. He announced through the mass media that he requested guarantees that no one gets access to his property declaration. The head of the relevant Committee of National Council of the Slovak Republic compared that to submitting tax declaration only after having such a guarantee; the only difference between these two cases are that common citizens, who do not submit a tax declaration, will be arrested, but there is no sanction for an official not submitting the property declaration.

The proposed constitutional law on conflict of interest regulated all these issues. The obligation to submit a property declaration would also relate to persons of close relationship. The proposal imposed post-employment restrictions (limitations) and was stricter than the adopted version. This was the main reason why the proposal was not adopted.

Furthermore, the Slovak legal procedure does not contain any provisions that protect those members/employees of local governments who call attention to illegal actions and other misbehavior. In general, Slovak law provides for the institution of protected witnesses used in important cases, but it is mostly used in cases such as organized crime activities, extortion, murders, and similarly serious crimes. No court has applied the witness protection program in cases such as corruption, bribery, or other property crimes. There have been attempts to establish a "whistleblower act." A few discussions have been organized but nothing more has happened.

3.2 Regulations of the Criminal Code

Slovak criminal law recognizes some criminal offences related to public service, and these laws are used more and more. In all cases, the following provisions of the Criminal Code are applied:

- *The criminal offence of abuse of public authority* (§ 158).
The public official commits a criminal offence if he purposefully causes harm to somebody; draws improper benefits for himself or a person related to him while performing official duties; violates regulations; or does not fulfill his obligations.
- *The criminal offence of fraud* (§ 250).
Any official who enriches himself or somebody else related to him by causing damage to foreign property, or by misleading or misinforming others and thereby causing damage to foreign property, commits this criminal offence.
- *The criminal offence of misuse of information in commercial activities* (§ 128).
Any official who uses confidential information not available to the general public for his own benefit or the benefit of someone related to him, whether using it to influence a decision on contract negotiations with a commercial enterprise, or to influence awarding a contract to a commercial enterprise or to assist others to do so, or to influence the trading of stocks commits this criminal offence.
- *The criminal offence of accepting bribes or other unfair advantage* (§ 160).
Any official who directly or through a middleman asks for or accepts for himself or someone related to him a bribe or other unfair advantage to abuse his office, or to secure a position or to give preference to a candidate for a position over others commits this criminal offence.
- *The criminal offence of illegal use of personal data* (§ 178).
Any official who publishes or makes available confidential information acquired through his office on personal data of a citizen commits this criminal offence.

Every provision of the Criminal Code relates to a certain form of illegal activity by public service employees as well. Even if some provisions apply indirectly to conflict of interest, they can be used in cases of suspicion of conflict of interest, despite the fact that explicit legal provisions do not exist. Otherwise it is possible to apply some of the above-mentioned provisions of the Criminal Code.

3.3 Other Measures Assisting Prevention of Conflict of Interest

Slovak legal procedure regulates administrative activity and provides legal instructions in the area of public administration. The basis of this legal regulation is law No. 71/1967 on administrative procedure. Besides this law, other laws contain provisions that impact on administrative procedures, such as the law on construction (No. 50/1976 Coll.), misdemeanor law, law on taxes and fee administration (No. 511/1992 Coll.), freedom of information act (No. 211/2000 Coll.), etc.

3.3.1 Right to Appeal Against a Decision of the Administrative Body

Each of these legal instructions provides for appeal against any decision issued by a public service body. For the purpose of this study, it is not important to deal with details of the individual provisions of the above-mentioned laws, however, one should describe at least the basic principles and provisions regulating public service.

The administrative body, on its own initiative or based on a proposal (presentment), can initiate an administrative action. Generally, a decision is announced in 30 days (for FOIA it takes 10 days).

The appellant can submit an appeal against the administrative body's decision within 15 days. The body overseeing the issuing administrative body considers the appeal on the first level. If the body is suitable in every respect to bring a decision, it can make a decision on its own. If the appeal is against a decision by a district office, the authority of appeal is the regional office, in the case of municipalities and regional self-governments, the next level is the state administration.

In the first case, the court decides since the self-government is directly elected by the citizens, thus it has no supervising authority. In the second case, the district/regional office decides since it is a state administration. There is no correct legal remedy for appealing their decision.

The administrative law also recognizes the institution of extraordinary legal remedy, such as retrial. The extraordinary legal remedy can be used when new evidence has emerged that might change deliberations and that has not been submitted previously.

Slovak legal procedures also recognize the institution of so-called administrative judiciary. This institution is not properly developed and needs to be reformed. It is established in the Code of Civil Procedure, in article 244, among others. It is possible to file for retrial within two months from the time the authority of appeal issued its decision. However, in such cases the court only considers whether the legal procedure conformed to the law, and it won't consider the issues of the case itself.

If the authority of appeal limits or refuses access to information requested by the claimant, and the court finds the request reasonable, the case will be returned to a competent administrative body for a new decision. Of course, the administrative body is obliged by the decision of the court (by its legal opinion). No further legal remedy is available against the court's decision in such cases.

3.3.2 Rules of Withdrawal

If an acting participant or a deputy of the administrative body thinks he may show bias in the decision-making process (including having a personal interest in the issue under consideration), he can request to be withdrawn from the process and be replaced by

someone else. The employee in question is excluded from hearings and from the decision-making process if his objectivity is in doubt. Similarly, anybody who has participated in deciding on the same issue at a different level is to be excluded from hearings and the decision-making process.

This provision can eliminate, or at least avoid the potential for, conflict of interest if it is applied to concrete cases at the local government level. The provisions concerning the exclusion of biased persons from administrative actions have to be assessed in connection with the provisions of civil and public service laws that have been quoted here before. It is the obligation of civil servants and employees of self-governments to perform their duties impartially, and to announce a potential conflict of interest. The provisions of article 9 of the administrative law applies this obligation to the activities of public service employees as well.

3.3.3 Rules for Public Procurement

Public procurement is a very important area in the discussion of conflict of interest. In the framework of Slovak legal procedures, Law No. 263/1999 Coll. on public procurement regulates it. Simply said, the rules on public procurement are very complex. This law regulates the following:

- the procedure of obtaining products, facilities and other material objects offered for sale commercially; labor and transportation needed for construction projects; financial services, legal services, labor services and other services;
- methods and procedures for public procurement and contracting;
- establishment and competence of the Public Procurement Office (from here on: “Office”).

The principles of transparency, equal treatment of all applicants and interested parties, fair competition, and responsible fund management are applied.

The law also regulates the procurers, the persons who are obliged to comply with this law. Besides bodies of state administration, the offices of a regional self-government, a municipality, or a budgetary organization of a regional self-governments or municipality are included in this category.

The law recognizes several methods of public procurement:

- a) public competition;
- b) limited competition;
- c) open, negotiated procedure;
- d) closed, negotiated procedure.

Methods a) and b) are used for contracts, while methods c) and d) are used only under special circumstances specified by law (see below). These four methods are divided into categories depending on the expected expense of procurement: over-limited, under-limited, limited with higher price and limited with lower price.

The law sets some restrictions that essentially prevent the manipulation of the public procurement process. The law is constructed so that the higher the price of a public procurement the stricter the conditions. So it is expected that the procurer will make an effort to split the expected price for the acquisition in order to avoid the more complicated public procurement method, or even to avoid public competition at all. The law says:

“The procurer cannot split the expense for the same kind of goods or services into several parts if the parts cannot function independently, or if the goods are delivered to the same destination.”

This provision should prevent unauthorized manipulation, the elimination of competition, and therefore potentially corrupt or illegal behavior.

Public procurement is announced by publishing conditions for bidding and the type of procurement procedure used. The procurer announces an over-limited public procurement in the public procurement bulletin and in the foreign press; an under-limited method of public procurement is published in the Bulletin only.

Anyone involved in the preparation of procurement competitions is obliged to keep details of the competition secret until the day the competition is announced. This provision is very important, since public procurement competitions are used mostly (but not only) at the local level, where local companies are the bidders, and officials involved in the procurement procedures and businessmen applying for public contracts often know each other.

Another very important provision of the law regulates communication between the procuring officials and interested parties. The announcement, pertinent documents and any other forms of communication between procurer and applicant is conducted to ensure that there is a record of all communication that is available to all parties. If the communication is conducted through equipment that is not able to record its content permanently, e.g., by telephone, the content has to be recorded and delivered in written form, and by the deadline determined by the terms of the announcement.

The procurer is obliged to provide for at least three bids to evaluate the offers. The law contains another provision for the evaluation of bids, to avoid possible conflict of interest.

“The commission member must have a clean record, and cannot be the applicant himself, nor can he be biased in relationship to the applicants. The commission member or a person closely related to him cannot be the statutory body or the member of statutory body of the applicant or

the partner of the applicant in a legal entity. The commission member cannot be an employee of the applicant, the employee of an association of businessmen whose membership includes the applicant or a person who is the employee of the company. The commission member familiar with the list of applicants who submitted bids must confirm to the procurer in a declaration that no circumstances are present that make his membership in the commission unacceptable, or he must explain the reasons why he cannot be a member.”

The procurer is obliged to allow all applicants who submitted bids by the official deadline to be present at the opening of sealed bids. The evaluation of the bids by the commission is not public, and the applicants cannot participate at commission meetings. The commission can ask for further explanation of their offer in written form. But the commission must not ask for or accept modifications in the offer. The commission will provide the procurer, without any delay, the list of rejected offers, with the explanation for the refusal.

The procurer is obliged to notify the submitters of rejected offers, along with an explanation for rejection. Based on the results of evaluation by individual commission members, the procurer will arrange contracting with the winner of the bidding process. If only one offer has been received and evaluated, then no contract will be closed. The procurer is obliged to accept a contract proposal from the winning applicant at least five days before the deadline, unless objections have been raised by the procurer. The procurer delivers the accepted contract without any delay to the applicant. If the applicant has submitted an objection against the procedure of the procurer, the procurer can accept the contract proposal only after deciding about the objection. The procurer cannot use the offers or their parts without the applicant’s approval.

Public procurement procedures differ in some details (such as the duration of terms) based on the selected public procurement method. Namely, the public competition and limited competition are similar, depending on the subject of procurement, and an unlimited number of applicants can submit offers. In some cases, the procurer can limit the number of applicants, but he must strictly follow legal provisions in doing that. There is a slight difference between the open, negotiated procurement procedure and the closed, negotiated procedure.

Public procurement means the acquisition of goods and services using public funds. Therefore, it should be done by the most transparent method. The law on public procurement provides for transparency, but the question is how far the law is willing to go in its requirements. The public procurement law is (should be) the legal norm to restrict not only conflict of interest, but also other kinds of corruptive, illegal behavior in this sensitive area where public funds are concerned and where illegal profits can be reaped.

The problems with public procurement appeared in connection with the project of State Treasury. The procurer, the Ministry of Finance, needed to purchase computer systems for use by the State Treasury. A competition was announced, three companies submitted acceptable bids, and their offers were very competitive. The winner was selected under not very clear circumstances. The decision of the commission of the Ministry of Finance was disapproved by the Public Procurement Office. The decision was revoked and the ministry was obliged to announce a new competition. The new competition yielded the same winner, and the Public Procurement Office's dismissal was the same, too. After an unduly long period of time, the ministry announced that it is under time pressure and picked a winner without any competition—a legal possibility under special circumstances. Certain circumstances and decisions still seem suspicious, and they have never been credibly cleared up. A criminal procedure was initiated, which has not been closed yet.

3.4 External and Internal Control Supporting the Prevention of Conflict of Interest in Local Governments

The audit system in Slovak public administration is divided into external and internal audit. The external audit is carried out primarily by the Supreme Audit Office, an independent body regulated by the Constitution of the Slovak Republic, and also by the special law on the Supreme Audit Office (No. 39/1993 Coll.). External audit includes monitoring by journalists, whose findings are published in the media, or by private citizens, based on the freedom of information act (No. 211/2000 Coll.), which provides extensive rights to make inquiries on many issues related to public administration. Internal audit is performed within the framework of state administration, regulated mostly by the law on audit in state administration (No. 10/1996 Coll.) and by the chief auditor of municipality/regional self-governments.

3.4.1 The Supreme Audit Office

The Constitution of the Slovak Republic regulates the position of the Supreme Audit Office in articles 60–63. The Supreme Audit Office is an independent audit body managing:

- budgetary funds that are approved by the National Council of the Slovak Republic or by the central government;
- property, commitments, funds, property rights and outstanding debts of the state, public–legal institutions and of the National Property Fund of the Slovak Republic;

- property, monetary funds and property rights of municipalities and higher regional units, obtained as cost reimbursement to converted state administration property;
- property, commitments, monetary funds, property rights and outstanding debts for which the Slovak Republic has assumed guarantees;
- property, monetary funds, property rights and outstanding debts to the Slovak Republic, legal entities or physical persons managing state budget funds and state property related to development projects or from similar foreign projects.

The auditing authority of the Supreme Audit Office includes:

- the Government of the Slovak Republic, ministries, and other central state administration bodies of the Slovak Republic and bodies subordinated to them;
- state bodies, and legal entities established by the central state administration or other state bodies;
- municipalities and higher regional units, legal entities established by municipalities and by higher regional units;
- state specific funds, public-legal institutions established by law, legal entities with equity participation of public-legal institutions or of state;
- the National Property Fund of the Slovak Republic, and legal entities with fixed equity participation of the National Property Fund of the Slovak Republic;
- physical persons and legal entities.

At least once a year, the Supreme Audit Office submits a report on the result of its auditing activities to the National Council of the Slovak Republic. It also submits a report when one is requested by the National Council of the Slovak Republic.

It follows from the above that the Supreme Audit does not have the absolute authority to audit any organization or individual it chooses. Local self-government bodies can perform audits only when state funds are involved, so only in cases when the body acts in the state's interest is it accountable to an external audit.

We can say that this is not sufficient, especially during the current process of decentralization when more authority and funds are transferred to municipalities and regional self-governments. The Supreme Audit Office must have wider authority to audit the management of self-governments' funds, since a major part of them come from the central budget, and consequently from the common tax pool of all citizens. Municipalities are mostly opposed to the control of the Supreme Audit Office. They claim that executives of the Office are political appointees, so they would have an opportunity to interfere politically with the activities of those municipalities, where the mayor or the council majority belongs to the opposition. This is a weak argument, and we have several examples of the misuse of public funds creating major problems in some cities.

A good example is the city of Kosice, where public funds were used for expensive reconstruction of the city centre, creating major debts that are owed to several commercial banks. Kosice is now trying to secure state subsidies and sell forests to the state. Ownership of these forests was transferred from the state to the city of Kosice in 1991, in accordance with the municipal property law. However, the sale would not be possible under central government supervision. Currently, every tax paying citizen contributes to Kosice's refinancing of its debts.

Law No. 39/1993 on the Supreme Audit Office of the Slovak Republic sets the responsibilities of the Supreme Audit Office in compliance with the Constitution of the Slovak Republic. In accordance with generally adopted legal provisions, the Office performs auditing of management, efficiency, and legality. The Supreme Audit Office's chief executives are its chairman and vice-chairmen. They are elected by Parliament. The auditors carry out the duties of the Supreme Audit Office. The auditors must have an immaculate track record, the necessary training, and work experience in the area of auditing. The auditors, as well as the chairman and vice-chairmen of the Supreme Audit Office, are obliged to keep secret any information acquired in the course of their auditing activities, unless the chairman or vice-chairmen decide to publish the information in writing to inform the general public. The duty of secrecy applies after the termination of office or the end of employment. The auditors also have the position of public officials, related to their auditing activities. The subject of the audit must provide all the information and circumstances, so that the audit can be carried out unobstructed. The Supreme Audit Office is authorized to levy fines up to 10,000 SKK, and, in cases of obstruction, the fine can be repeatedly meted out. Based on article 4 of this law, the subject of the audit is obliged to provide the Office with all requested information, documents and explanations related to the audit.

The audit cannot be performed by auditors whose fairness and independence from the subject of the audit can be questioned. The audited subject can raise written objections about the auditor's fairness.

The Office notifies the relevant state agency under whose authority the subject belongs about the audit's findings. The Office notifies the state administration bodies of the findings related to its activities. Shortcomings in the activity of central state administration body will be reported to the government. The body to which the Office sends its report on the shortcomings discovered by the audit is obliged to rectify them in its authority and provide feedback in written form to the Office.

3.4.2 The Chief Auditor

i) The chief auditor of the municipality

Based on article 18, paragraph 2 of Law No. 39/1993, the chief auditor of the municipality primarily:

- performs the audit of revenues and expenditures of the municipal budget and the management of municipal property, as well as management of budgetary or compensatory organizations of the municipality;
- drafts professional statements on the proposed municipal budget and provides the final accounting before it is submitted for approval to the municipal council;
- submits the results of the audit directly to the municipal council;
- at least once a year this auditor submits a report on the results of his auditing activity to the municipal council;
- cooperates with relevant state bodies in auditing the management of state funds by the municipality.

Beside this, he/she participates at the sessions of the municipal council and at the sessions of municipal board and has an advisory vote. The chief auditor has access to all accounting and treasury documents, as well as any documents related to treasury operations, accounting administration, management of municipal property, and any other documents required for auditing.

The municipal council will recall the chief auditor if:

- he is convicted of the intent to commit a crime, or is convicted of committing a crime, unless the sentence is suspended;
- he fills a position that is incompatible with the office of chief auditor;
- he fails to perform his duties responsibly and with due integrity;
- he is barred from or restricted in performing legal actions.

The statutes of cities/municipalities approved by city/municipal councils can provide the chief auditor with more concrete or specific tasks. However, these statutes have to be in compliance with provisions of the law. There is space to extend the authority of chief auditor, since the law only talks about “the chief auditor’s primary responsibilities,” and does not exclude the possibility of extending his authority. It is the municipal/city council that regulates the chief auditor’s activity.

ii) The chief auditor of regional self-governments

The chief auditor of regional self-governments, based on article 19, audits the task fulfillment of regions, mostly auditing of revenues and expenditures of a regional self-

government's budget and auditing property management by regional self-governments. At least once a year this official submits a report on the results of his auditing activity to the council of the regional self-government. The regional self-government is obliged to ensure the chief auditor's independence.

The difference can be easily seen between the ways the activities of the chief auditor are treated at the regional self-governmental and municipal levels. In my opinion, the law does not provide enough space for the extension of the auditor's authority on some specific issues. The council can recall the chief auditor on the grounds that the chief auditor:

- is convicted of the intent to commit a crime, or is convicted of committing a crime, unless the sentence is suspended;
- fills a position that is incompatible with the office of chief auditor;
- fails to perform his duties responsibly and with due integrity;
- is barred or restricted in performing legal actions.

Several controlling mechanisms at different levels of public administration contribute not only to the prevention of conflict of interest, but also to transparency and the prevention of corrupt behavior and other forms of misconduct.

In the current process of decentralization, there is also a plan to create and adopt a law on auditing at local self-governments. This law should define the status and responsibility of auditors more precisely, since, currently, their real authority greatly depends on the good or bad will of the councils. The majority of Slovak municipalities do not have their own chief auditor.

3.4.3 The Ombudsman

In the summer of 2002 the institution of ombudsman, the public defender of civil rights, was established in the Slovak legal system. This happened by the approval of law No. 411/2002 Coll. and the provisions of the Constitution of the Slovak Republic. This law has been in effect since August 6, 2002, because it took time within the National Council of the Slovak Republic to elect an ombudsman. The law prescribes that the ombudsman take office not later than six months after swearing in. This period is used to find the suitable domicile, etc. So in reality, this institution has been functioning for a very short time. Therefore we do not have any experience with the activities of the ombudsman in Slovakia.

His basic task is to participate in the protection of basic rights and freedoms of physical and legal entities relating to actions, decisions or malfunction of public administration bodies that are in conflict with effective laws or with the principles of a democratic state.

If a physical or legal entity believes their rights have been violated, they can turn to the ombudsman. In our case, this primarily concerns the decisions of public administration bodies. If the ombudsman comes to the conclusion that a decision is in conflict with effective legal provisions, he will refer the case to a prosecutor. He is to inform the applicant of this procedure. The prosecutor is obliged by law to report to the ombudsman what measures he adopted to handle the case.

3.4.4 Civic Audit, FOIA

Civic audit has been provided for several years by journalists, who have acted traditionally as the “watchdogs of democracy.” They monitor the management of public funds and the activities of public administration bodies, and they call attention to shortcomings in the activities of public administration bodies. At times it can effect the replacement of incompetent or corrupt public officials.

Law No. 211/2000 Coll., called the freedom of information act (FOIA), has contributed to the extension of opportunities and tools of civic audit because this law has extended the possibilities of external control of public administration bodies. The law provides private citizens, and not only journalists, with several effective tools to make inquiries on public issues and exert pressure on public administrations to be more transparent, productive and efficient.

The law marks in its provisions so-called obliged entities. They are state bodies, municipalities, and legal entities and individuals to which the law entrusts the authority to decide on the rights and duties of physical persons or legal entities in public administration, but only within their area of authority. Regional self-governments also belong in this group, as do legal entities established by law and by the state body or municipality, based on the special law. The law primarily concerns such organizations as the Slovak State Television Network, the Slovak Radio Network, the State Welfare Agency, etc., as well as state foundations and organizations established by the state, municipality or regional self-governments. Also, legal entities that are charged with the management of property of the state, municipalities, or regional self-governments are included here.

Access to information is provided to everyone, though the law does not define who is meant by “everyone”; it refers to all physical persons or legal entities. It does not make distinctions as to the physical person’s citizenship or age, for example. The law guarantees access to information in the most extensive way. Access to confidential information by authorized persons is specified in this law. The law protects bank secrets, commercial secrets, tax information, all classified data based on the law on classified materials, and personal data. The basic principle is: “What is not secret is public.” Information can only be classified by the National Security Office and the Office publishes the lists in

announcements. This applies to state administration bodies as well as to local self-governments.

Some problems have arisen concerning public access to information that certain officials are not accustomed to providing and that they often try to withhold.

One example of this is the public listing of mobile telephone numbers of officials in local self-governments. Access was denied on the grounds that the numbers belong in the province of personal data, based on the freedom of information act requiring consent of concerned individuals. The appeal against this decision was rejected. But the court had a different opinion in cases where the mobile phone is the property of the municipality and is paid for by public funds. Citizens have the right to audit public funds management, and since the mobile phones are the property of the municipality and are financed from public resources, citizens have the right to know the numbers. In any case, the issue is not about personal data, since the phone is related to a certain office or position, not to a certain individual.

The law distinguishes mandatory publishing of certain types of information by the obliged persons automatically, without anyone requesting access to it. This includes general information about office organization, phone numbers of employees, the general functions of the office, and other relevant information. It also includes information on the activities of the self-government's council, official documents, etc. All public information should be provided on request.

The applicant has to submit a request for the information, and the law sets minimal requirements for the application. The application has to be clear, it has to contain the applicant's name, the subject of his request, the person or the authority the applicant wants to receive the information from, and what format the information should be in. The law allows for written or oral communication, by phone, fax, email, or in any way or format possible. The parties can agree on what format information is provided, such as email, paper copies, etc.

The information must be provided free of charge. Obligated persons who have access to the information must assemble it based on the application. The deadline to provide the requested information is between 10–30 days from the time of application. Only information requested has to be provided.

3.4.5 Political Responsibility

Elected representatives of self-governments have a political responsibility. They are appointed based on elections, i.e., the public's decision on who should administer public issues at the level of municipality or regional self-government. Elections also provide an opportunity for the citizens to express their judgment of the performance

of the municipality or regional self-government. They contribute to the administration through taxation, and so they should take an interest in the quality of services they receive in return. Political responsibility is more important in decentralized systems (or in post-communist states that are in the process of decentralization), since elected representatives and not state appointed officials have the major influence on public policy issues. So a mayor, for example, is a statutory body in labor relations, and he/she is politically responsible for the actions of his/her staff.

Disciplinary responsibility of government employees is regulated mostly by civil service law or by public service law. The relevant legal provisions contain regulations on rights and responsibilities, including disciplinary responsibility through “non-legal” (but not illegal) documents. The law applies to each individual employee. The civil service law states explicitly that, except for the generally adopted legal instructions, the civil servant is also bound by the ethics code¹⁰ issued by the Civil Service Office of the Slovak Republic. The public service law empowers individual institutions to issue labor regulations that bind employees in public service; the labor procedure has to be approved by labor organizations, otherwise it is not valid.

Criminal responsibility, and individual criminal acts have been discussed above; criminal law applies to everybody.

3.4.6 Education and Training

The system of education could play a major role with an emphasis on anti-corruption behavior and proper performance of official duties. This education is realized systematically more at the level of local state administration; mostly it is the heritage of the centralized system of public administration from the communist era. The training of self-government employees is also organized, but not with the same scope and regularity. More often, training is done at the initiative of the self-government or non-governmental organizations, which can be a disadvantage, especially for small municipalities.

Along with the process of decentralization, when more and more authority is transferred to the self-government, it is necessary to focus attention on education about anti-corruption activities as well as the closely related issue of conflict of interest.

4. CONCLUSIONS AND FINAL REMARKS

The problem of conflict of interest at the local level is only partially regulated. The legal provisions regulate conflict of interest mostly in the area of civil service. The provisions of the law on the exclusion of business activities, conflict of interest and its prevention, and some other issues, generally apply to state employees who have the status of civil

servants. Even though state employees can have easy access to official information, no provisions cover the abuse of such information for personal gain. In my opinion, this is a significant shortcoming of current legislation.

The issue is not satisfactorily regulated in local self-governments. It is significant that the regulations of public service apply not only to employees of local self-government but also to doctors, nurses in state hospitals, teachers, employees of museums, galleries, etc. Strict, binding regulation is not as suitable and necessary for public employees as for officials in state administration.

Special regulations related to representatives of self-government councils, mayors, and heads of regional self-governments are needed. The laws that established these positions provide insufficient regulations on incompatibility of positions, or the problem of conflict of interest. An obligation to submit a property declaration, or a ban on simultaneously running a business, does not exist at the local level.

The draft of a constitutional law on conflict of interest submitted to Parliament in May 2002 covered all these areas but was rejected. The law applied to a wider circle of constitutional, as well as public officials. Besides the “incompatibility of wages,” as it is incorrectly interpreted in the present law, the proposal also regulated the incompatibility of positions and real (and possible) incompatibility of interests.

The proposal banned the incompatibility of positions that is allowed in effective laws today in Slovakia for members of Parliament, mayors, representatives of regional self-governments, etc. The proposal explicitly regulated the incompatibility of positions for state employees, members of statutory bodies of state companies, municipal companies or companies of regional self-governments. The proposal set an absolute ban on running a business for everyone to whom the proposed law was supposed to apply. In the proposal, officials were obliged to declare the possibility of conflict of interest, even including relatives or other related persons. All persons to whom the law applied were obligated to submit property disclosures. This obligation would apply not only to concerned individuals but to everyone living in the same household.

The proposal included explicit regulations on post-employment restrictions (limitations). Data listed in property disclosures could have been verified by the financial police or with other units of public administration—this is not possible in the current system. In cases of non-compliance, with duties set by the proposal of constitutional law, sanctions were determined, such as loss of mandate, dismissal from employment, fines of relatively high amounts, etc.

There were two “supplementary” laws attached to the proposal of the constitutional law that provided individual specifications concerning local self-governments. Since the proposal of constitutional law did not pass the parliament, it was completely useless to act on these proposals.

The new coalition elected in 2002 declared in its program the approval of a new constitutional law on conflict of interest. The minister of justice has created a working

group of MPs, representatives of government, self-governments and non-governmental organizations. The proposal should be submitted to the National Council of the Slovak Republic in 2003. The new legal regulations should be quite similar to those proposed in the spring of 2002. In general, they should improve the legal environment in this area.

The first draft was already presented. The proposed constitutional act is more detailed than the previous one and also covers representatives of self-governments. Self-government representatives are strongly opposed to the draft. No supplementary laws have been submitted, so relevant laws will have to be amended. This process is still ongoing.

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The Constitution of the Slovak Republic.

NOTES

¹ Slovak National Council was renamed at the establishment of the Slovak Republic on January 11, 1993 as National Council of the Slovak Republic.

² In this report, we will consider local self-government at both the local (municipal) and regional levels.

³ The legal form of ethics code is a regulation with “under-act legal power.” It is issued by the Civil Service Office, signed by its director, upon the concrete delegation set in the Civil service law.

⁴ Source: “Office of the General Prosecution of the Slovak Republic” In: *Monitoring the EU Accession Process: Corruption and Anti-corruption*.

⁵ Source: Institute for Public Opinion Research, Slovak Statistical Office. See Note 4.

⁶ For a detailed explanation, see also the sub-chapter on civic audit, FOIA.

⁷ See also the case on using the municipal mobile phones.

⁸ The Constitution of the Slovak Republic was approved by the Slovak National Council on September 1, 1992.

⁹ See also the case of possibility of running a business.

¹⁰ Ethics code for civil servants is described in section 1.2.A.

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Local Government and Public Service Reform Initiative

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